

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

18-CR-538 (MKB)

4 Plaintiff,

United States Courthouse
Brooklyn, New York

5 -against-

March 17, 2022

9:30 a.m.

6 NG CHONG HWA,

7 Defendant.

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10 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE MARGO K. BRODIE
11 UNITED STATES CHIEF DISTRICT JUDGE

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13 For the Government:

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24 Proceedings recorded by mechanical stenography. Transcript
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PROCEEDINGS

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Please call the case.

4 THE COURTROOM DEPUTY: Now calling case number
5 18-CR-538. U.S.A. versus Ng.

6 THE COURT: Same appearances for the record.

7 MR. AGNIFILO: Yes, Judge.

8 THE COURT: I understand that there is an issue the
9 parties want to discuss with the Court.

10 MR. ROLLE: Yes, Judge. This morning the
11 government -- and we flagged this for counsel -- received
12 copies of proposed defense exhibits that the defense is going
13 to attempt to offer through the FBI CART examiner who
14 performed forensic extractions of two Tim Leissner devices.
15 We're just looking at them now, but the vast -- a number of
16 them are not admissible, they are -- subject to your Honor's
17 ruling when Tim Leissner was on the stand would constitute
18 extrinsic evidence to impeach Tim Leissner. Tim Leissner was
19 never shown any of these documents. They weren't admitted at
20 the time, they can't be admitted now, but more of a logistical
21 hurdle, and I'm not sure how we work through this, this
22 witness has never seen these redacted exhibits from the
23 defense, he's a custodian of a report. He can't authenticate
24 any of these defense exhibits as he sits here today.

25 So I don't want to run into a point where the

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1 witness -- we're wasting the jury's time because the witness
2 can't identify all of these. Some of these exhibits are fine
3 from our perspective to be admitted, but some of them we want
4 to raise now because --

5 THE COURT: What are these documents.

6 MR. ROLLE: I have a set here, your Honor. They are
7 excerpts of a Cellebrite forensic report for a cellular
8 telephone used by Tim Leissner. So the report itself is
9 thousands of pages. The report is not coming into evidence in
10 full. The government has marked and will admit sub-exhibits
11 from that report, and the defense has done the same for
12 sub-exhibits they believe can be admitted.

13 The witness has reviewed the sub-exhibits that the
14 government has marked, confirmed yes, these are sub-reports of
15 report I generated and I can authenticate them. The defense
16 exhibits are also sub-reports. I can't tell, and I understand
17 from counsel which phone they come from, but that's not
18 obvious from the face of document and I fully expect it won't
19 be obvious to the witness as well. That is point one and I
20 wouldn't want to waste the jury's time with that.

21 But more substantively the vast number of them are
22 emails between Tim Leissner, Kimora Lee Simmons and yacht
23 brokers about his purchases of a yacht or leasing of a yacht
24 and things that have nothing to do with this case. They had a
25 lot to do with the cross-examination of Mr. Leissner but

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1 that's now done. So those aren't admissible. There are some
2 that we see do relate to the case and we have no problem with
3 those coming in. This witness, again, probably can't do that
4 but the parties can stipulate and admit them separately, but
5 we didn't have a chance to do that because we got them this
6 morning.

7 THE COURT: Okay. Mr. Agnifilo.

8 MR. AGNIFILO: Your Honor, there's sort of a larger
9 problem and let me take the Court through exactly what the
10 situation is.

11 There are two phones at issue. The one that we've
12 known all along --

13 THE COURT: And let me just stop you for one second.
14 I take it all of this is something I need to address before
15 our morning break?

16 MR. AGNIFILO: I'm sorry I couldn't hear, your
17 Honor.

18 THE COURT: I assume this is something I need to
19 address before our morning break?

20 MR. AGNIFILO: I think so. I think so.

21 THE COURT: Okay.

22 MR. AGNIFILO: One phone, and it is the Blackberry,
23 Blackberry 9900 Bold phone, it's Government Exhibit 2605 with
24 sub-exhibits there's no issue with, that's fine. The reason
25 it's fine is we've always known -- not always but we've known

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1 with a reasonable amount of time they were going to put in
2 excerpts of the extraction report of that phone.

3 At 10:30 last night we emailed the government, are
4 you putting in excerpts from any other phone and they didn't
5 say they were putting in excerpts from any other phone. So we
6 brought up to them, we want to bring in excerpts of a second
7 phone, and the second phone is a Blackberry Q10 phone.

8 At 9:31 this morning, precisely 12 minutes ago, we
9 got proposed Government's Exhibit 2604-B, which consists of 93
10 pages, and proposed Government Exhibit 2604-D, which consists
11 of 57 pages. We haven't read them, we got them 12 minutes
12 ago, and the problem with getting it 12 minutes ago --

13 THE COURT: But you're not suggesting this is the
14 first time you're seeing these documents.

15 MR. AGNIFILO: No, not the first time we're seeing
16 them --

17 THE COURT: Okay.

18 MR. AGNIFILO: -- but they were among the 20 million
19 pages of documents we got, but they weren't indicating they
20 were putting them in.

21 MR. ROLLE: I'm sorry, judge, I have to interrupt
22 just to correct. The government marked both full Cellebrites
23 as exhibits weeks ago. What we did this morning was identify
24 the specific four sub-exhibits that we would offer. Just to
25 clarify with the record.

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1 THE COURT: We're not going to argue over the fact
2 that they only today told you which parts of the exhibit
3 they're admitting. You've had the records.

4 MR. AGNIFILO: But we have to because it's a 106
5 analysis. We have to do -- we have a responsibility to our
6 client to come to the Court and say under the Rule of
7 Completeness, if you're going to let these specific things
8 into evidence, we should also bring in these specific things
9 into evidence. A 106 analysis cannot be done in 12 minutes,
10 not in any kind of responsible fashion.

11 So here's my proposal. They want to go forward with
12 the witness with Government Exhibit 2605, that's fine. We
13 knew about that in enough time, there is no exhibits being
14 given to us for the first time 12 minutes before the witness
15 testifies, and they can do that.

16 THE COURT: There's no exhibit that was given to you
17 12 minutes before the witness testified.

18 MR. AGNIFILO: That's not true, Judge. The
19 Cellebrite report --

20 THE COURT: The fact that you have the entire report
21 means you've had the record.

22 MR. AGNIFILO: They weren't using it, so there is no
23 106 analysis for evidence --

24 THE COURT: What do you mean they weren't using it.
25 Why would you assume that the government isn't going to use

PROCEEDINGS

1 its exhibit that it's marked --

2 MR. AGNIFILO: We asked them 10:30 last night.

3 THE COURT: I'm not following you, counsel. You're
4 suggesting that until the government says, we're going to put
5 this evidence in, that it's not evidence that you should be
6 prepared to cross examine. If the government marked it as an
7 exhibit, then it is evidence that may come into trial. The
8 fact they didn't tell you until 10:30 last night which
9 specific parts of that exhibit they plan to admit, doesn't
10 mean that you didn't know until whenever they told you that
11 they're going to try to offer some of that exhibit.

12 MR. AGNIFILO: But it's a report that consists of
13 thousand of pages. To do a 106 analysis you need to know
14 specifically what they're looking to put in, because the 106
15 analysis relies on the actual evidence that they're trying to
16 put in front of the jury so that we can say, Judge, if they
17 are putting in these 10 chats, we should be able to bring in
18 these five chats. You can't do that until --

19 THE COURT: Okay. What are the parties fighting
20 over, what specific exhibit?

21 MR. AGNIFILO: My request is this: We are --

22 THE COURT: No, I want to know what you're fighting
23 over so I can decide how we proceed.

24 MR. AGNIFILO: We are fighting over the exhibit that
25 we just got this morning, after last night we asked them if

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1 they were putting it in and they did not say they were putting
2 it in.

3 THE COURT: Can I please have a copy of the exhibit
4 now.

5 MR. ROLLE: Judge, we can email them to Joe now, we
6 have electronic copies that we were going to show. We can do
7 that now, Judge.

8 THE COURT: I want to see what defense is seeking to
9 offer.

10 MR. AGNIFILO: We have that, Judge.

11 THE COURT: I need you to also email to the Court's
12 email, and the parties should know what that is, I don't want
13 put it on the record. If not, you can ask my law clerk for my
14 email so that I can pull it up right here on the bench.

15 Starting with you government, tell me what your
16 records are.

17 MR. ROLLE: I'm sorry, Judge, I missed the last
18 part.

19 THE COURT: Tell me what your records are that
20 you're seeking to introduce.

21 MR. ROLLE: The government is seeking to admit as
22 part of 2604, the summary source extraction page of a
23 Cellebrite report which -- one moment, Judge, which is
24 essentially identical information as another similar report
25 from 2605 summarizing general device information.

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1 We would be offering 2604-B.

2 THE COURT: Can someone please close that door.

3 Go ahead.

4 MR. ROLLE: 2604-B is the entirety of the call log
5 from the device in full; no redaction.

6 2604-C-1 are two chats that we marked. The first
7 chat is between Tim Leissner Boon-Kee Tan and Roger Ng; no
8 redactions. The second chat is a chat between Roger Ng and
9 Tim Leissner. Those are the two chats.

10 Then 2604-D is the full contact list for the device;
11 no redaction.

12 THE COURT: And Mr. Agnifilo what --

13 MS. GERAGOS: I just would like to put on the record
14 that we just double checked and 2604 was on the government's
15 exhibit list index from February 28th, but we just double
16 checked and it is not in the actual file, so I just alerted
17 the government's paralegal. We don't see it in the actual
18 Dropbox file. It is in the index they produced to us on
19 February 28th. And we did receive this phone in discovery
20 September, October of last year.

21 THE COURT: Okay. And with regard to the documents
22 that you're seeking to admit, Mr. Agnifilo, based on the Rule
23 of Completeness.

24 MR. AGNIFILO: Yes, so I think that the documents
25 we're seeking -- the portion of the phone we're seeking to

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1 admit, we're not seeking anything that would be offered for
2 the truth, we're seeking, for the most part, what I would
3 consider sort of payment information. It's not to impeach
4 Leissner, it's substantive evidence of payment information.

5 THE COURT: You need to tell me what it is.

6 MR. AGNIFILO: Unfortunately, you have my version,
7 Judge, but -- I apologize for that.

8 THE COURT: That's okay.

9 First, let me ask the government, what are the chats
10 about that you're seeking to introduce.

11 MR. ROLLE: It was simply Mr. Leissner and Mr. Ng
12 and Boon-Kee Tan discussing business and I think it's 2014,
13 your Honor.

14 THE COURT: Okay. And, Mr. Agnifilo, you're
15 suggesting chats that you believe will go to this issue or
16 additional information.

17 MR. AGNIFILO: It's not related -- it's not related
18 to those limited chats, it isn't.

19 THE COURT: It's not.

20 MR. AGNIFILO: It's not.

21 THE COURT: So then it's not Rule 106.

22 MR. AGNIFILO: I don't believe it's admissible under
23 106.

24 THE COURT: Tell me what it is you want to admit and
25 the rule under which you're seeking to admit.

PROCEEDINGS

1 MR. AGNIFILO: Yes, Judge.

2 For instance, I'm looking to admit a chat from
3 June 26, 2014 between Tim Leissner, Judy Leissner and someone
4 named Grace Lee at -- I'm sorry, Tammy Lee at Grace Vineyard
5 and it is Tim saying, hello, Tammy, please help me arrange
6 this transfer, and he talks about a 5 million-dollar transfer.

7 So the chats that I'm looking to admit -- and the
8 reason that I believe they are admissible is because they are
9 not being offered for the truth of any assertions in the
10 statement -- are chats related to Leissner directing payments
11 that I think are things that are relevant in the case and
12 certainly relevant as to whether Leissner is directing the
13 payment or whether someone else is directing the payment. So
14 we're really limiting the scope.

15 THE COURT: Relevant to what?

16 MR. AGNIFILO: Relevant to the substantive issues in
17 the case, that Leissner is directing these payments.

18 THE COURT: But are these payments in any way
19 related to the 1MDB issue?

20 MR. AGNIFILO: Some are, some are, and then some
21 just relate to 1MDB funds that Leissner is using for different
22 sources, but the idea is that it's all emanating, at least the
23 ones, the chats we're looking to admit, show that it is -- the
24 direction is emanating from Leissner. So it's either relevant
25 because it's a relevant payment or it's relevant because it's

PROCEEDINGS

1 Leissner directing the payments of the use of 1MDB funds.

2 MR. ROLLE: Judge, I'm sorry, I'm completely lost.

3 I don't know what counsel is talking about. I have marked
4 exhibits, I don't know what chat he's referencing. If he
5 could refer to the exhibit number. But the chats that -- the
6 emails or whatever I'm looking at here, are about yachts and
7 about receipts for the LADY C emails with OS Yachting. Maybe
8 I'm missing -- again, I don't know what counsel is looking
9 at --

10 MR. AGNIFILO: I'm happy to use exhibit numbers.

11 MR. ROLLE: -- but it might make sense to go exhibit
12 by exhibit since they are marked.

13 THE COURT: Okay. So here's what I'm not going to
14 do, I'm not going to spend the next hour with the parties
15 trying to figure out what this jury should see with this
16 particular witness or not.

17 Mr. Agnifilo, if you have to you'll have to bring
18 this witness back.

19 MR. AGNIFILO: Okay.

20 THE COURT: Is there any reason why this witness
21 cannot be available?

22 MR. ROLLE: I don't believe so. I think he's here.
23 I do know he has official travel for another case, but we'll
24 confirm that he's still here and we can make sure he's here.

25 THE COURT: We're going to move forward.

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1 Is there any objection to the evidence the
2 government is seeking to offer?

3 MR. AGNIFILO: No.

4 THE COURT: And I think you're in agreement as to,
5 or at least the government is with regard to some of the
6 evidence you're seeking to offer through this witness; is that
7 correct?

8 MR. AGNIFILO: I think that's right. And I think if
9 we had more time we could probably get even more agreement.
10 So if your Honor leaves open the possibility that we could
11 call this witness very briefly on our defense case, that's
12 fine with us.

13 MR. ROLLE: Just --

14 THE COURT: Well --

15 MR. ROLLE: I'm sorry, go ahead, Judge.

16 THE COURT: I just don't want to keep the jury
17 waiting any longer.

18 MR. ROLLE: And my solution and one proposal, this
19 witness will authenticate both of these reports in their
20 entirety. That was his whole job. We won't need to bring him
21 back to authenticate anything. We can decide if these
22 sub-reports, which are authenticated, should be admitted. So
23 this witness doesn't have to come back to do anything.

24 THE COURT: Understood. And to the extent that
25 there are chats that Mr. Agnifilo wants to admit that the

PROCEEDINGS

1 parties can't agree on, then I can rule and they can be
2 admitted or not.

3 MR. AGNIFILO: Very well.

4 MR. ROLLE: Thank you, Judge.

5 THE COURT: Okay. Why don't you bring in the jury,
6 Jose. Thank you.

7 (Witness takes stand.)

8 (Jury enters courtroom.)

9 THE COURT: Please be seated everyone.

10 Good morning members of the jury.

11 JURORS: Good morning.

12 THE COURT: Thank you for being on time. I
13 apologize we were a little bit delayed getting started. We
14 try to avoid this, but we had a few issues to address.

15 We'll continue with the testimony of this witness.
16 Please remember that you're -- is this a new witness?

17 MR. ROLLE: Yes, your Honor.

18 THE COURT: Can you please identify the witness for
19 the record.

20 MR. ROLLE: We call Christian Isolda to the stand.

21 THE COURT: Please stand. Raise your right hand.

22 (Witness sworn.)

23 (Continued on the next page.)
24
25

ISOLDA - DIRECT - MR. ROLLE

1 **CHRISTIAN ISOLDA**, called as a witness, having been first duly
2 sworn/affirmed, was examined and testified as follows:

3 THE WITNESS: I do.

4 THE COURT: Thank you. Please be seated.

5 Please state and spell your name for the record.

6 THE WITNESS: Christian Isolda.

7 THE COURT: Pull the mic towards you. You can
8 adjust it but please keep it close to you. We've changed the
9 cover so that you don't need to be concerned about that.

10 Please restate and spell your name.

11 THE WITNESS: Christian Isolda. C-H-R-I-S-T-I-A-N.
12 I-S-O-L-D-A.

13 THE COURT: Thank you.

14 Please proceed, counsel.

15 MR. ROLLE: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. ROLLE:

18 Q Good morning, sir. Who do you work for?

19 A I work for the Federal Bureau of Investigation.

20 Q What's your title?

21 A I'm an information technology specialist/forensic
22 examiner.

23 Q How long have you done that with the FBI?

24 A I've been doing this for two and a half years.

25 Q And are you assigned to a particular team within the FBI?

ISOLDA - DIRECT - MR. ROLLE

1 A I am.

2 Q What team?

3 A It's the Computer Analysis Response Team.

4 Q Also known as CART?

5 A Correct.

6 Q What are your duties and responsibilities as a CART team
7 member?

8 A We collect, preserve and perform analysis on digital
9 media.

10 Q What does that mean laypeople's terms?

11 A We analyze and extract digital media which is essentially
12 computers, cell phones, tablets, stuff like that.

13 Q What's your educational background?

14 A I have a bachelor's OF science in computer science from
15 Marist College. I graduated in 2019.

16 Q Have you received training in the analysis of electronic
17 evidence?

18 A I have.

19 Q And forensic examination of electronic devices?

20 A I have.

21 Q What types of training have you received?

22 A I received over 400 hours of training ranging from mobile
23 device training to Windows training, MAC training.

24 Q Have you obtained any certifications in the course of
25 your work?

ISOLDA - DIRECT - MR. ROLLE

1 A I have.

2 Q What kind of certifications?

3 A I am an In-System programming technician certified. I'm
4 also a Chip-Off certified, mobile device certified, MAC
5 authorized, Windows authorized.

6 Q What's Chip-Off certified?

7 A It's an advanced extraction method to extract cellular
8 devices.

9 Q So you've used the term extraction a couple of times,
10 what is an extraction? What do you mean by that?

11 A An extraction is pulling data off of a piece of digital
12 media.

13 Q Cell phone or computer?

14 A Correct.

15 Q And do you undertake those extractions as part of your
16 work at the FBI?

17 A I do.

18 Q What's the purpose of extracting a device?

19 A The purpose of extracting a device is to pull the data
20 from the device and usually for analysis so it's easily --
21 it's easily reviewable for the case team.

22 Q How do you extract a cellular device for example?

23 A There are approved software tools and other extraction
24 methods to pull data off devices.

25 Q What does it entail from you?

ISOLDA - DIRECT - MR. ROLLE

1 A It entails -- well, training and knowing how to use the
2 tool and following our process to pull the data properly.

3 Q So what tools are used to extract data from a digital
4 media?

5 A The main tool that we -- or I use is Cellebrite.

6 Q And what's that tool?

7 A It's a tool used to extract digital data off of mostly
8 mobile devices.

9 Q What's generated out of this extraction?

10 A Once an extraction is performed, a report is generated
11 from the data that was extracted.

12 Q A report?

13 A Yes.

14 Q What would that report contain?

15 A It contains all the data that was housed in that
16 extraction, stuff like text messages, call logs, stuff like
17 that.

18 Q Have you created reports in the course of your work at
19 CART, as a member of the CART team?

20 A I have.

21 Q Approximately how many extractions have you performed?

22 A I performed over 500 extractions.

23 Q And how many reports have you generated from extracted
24 data?

25 A Around the same amount, 500.

ISOLDA - DIRECT - MR. ROLLE

1 Q And in your role as a member of the CART team, do you
2 work on cases like an FBI special agent might work on a case?

3 A I do not.

4 Q You do not?

5 A No.

6 Q What's the difference?

7 A I support the case team, so I'm not doing the
8 investigating. They ask for help pulling data off devices and
9 I support them.

10 Q So in general do you get familiarity with the facts
11 underlying any given investigation that you're supporting?

12 A That depends case by case or request by request.

13 Q How about this case that you're sitting here today, do
14 you know anything about that case?

15 A No, I do not.

16 Q Do you know who the defendant is?

17 A No.

18 Q So what work did you perform in this case?

19 A I received four mobile devices and I went through our
20 process of in-taking them, inventorying the devices, figuring
21 out the best way to extract the data off the devices and once
22 the extractions were finalized, I generated reports for
23 review.

24 Q What cellular devices did you generate reports for?

25 A I generated reports for, there was three Blackberrys and

ISOLDA - DIRECT - MR. ROLLE

1 one Nokia.

2 Q Was one a Blackberry Bold 9900?

3 A Yes, that sounds right.

4 Q And Blackberry Q10?

5 A Yes.

6 Q And how did you generate those reports?

7 A I used Cellebrite to generate a report.

8 Q Now are there -- let's talk about extractions a little
9 bit more in detail. Are there different ways to extract data
10 from a device?

11 A Yes.

12 Q What are some of different ways?

13 A There is different methods. There's some software ways,
14 there's some hardware ways, depends on what kind of device
15 we're dealing with.

16 Q Do different types of extractions get more or less data
17 from a device?

18 A Yes.

19 Q How does that happen?

20 A It's -- since there are different types of extractions
21 they pull different things which can leave out some things,
22 can take some other things as well. So it depends on the type
23 of extraction being done.

24 Q Which type of extraction gets the least amount of data
25 from a device?

ISOLDA - DIRECT - MR. ROLLE

1 A Typically, it's called a logical extraction, which gets
2 the least amount of data from a device.

3 Q Why is that?

4 A It's just the nature of how the tool extracts it. It
5 picks and chooses what it's allowed to extract from the phone.

6 Q What type of extraction gets the most data from a device?

7 A Typically, a physical extraction or a full file system
8 extraction grants you the most data.

9 Q Why does a physical extraction get the most data?

10 A It's considered a full copy of the storage chip that's on
11 the device. And should take -- and takes it bit by bit, so it
12 gets the entire chip.

13 Q It gets the entire chip?

14 A Yes.

15 Q So when you're extracting data from a device, you're
16 getting whatever data is recoverable on the device at the time
17 of the extraction?

18 A Correct.

19 Q On the Blackberrys you mentioned earlier, what types of
20 extractions did you generate reports from?

21 A I generated reports from two physical extractions.

22 Q For the Blackberry 9900 and the Q10?

23 A Correct.

24 Q Are there times when data cannot be extract off of a
25 cellular device?

ISOLDA - DIRECT - MR. ROLLE

1 A If a certain extraction, if a physical is not able to be
2 done on the device there may be some data left behind, so that
3 would warrant that.

4 Q I'm sorry, are there times when you can't get any data
5 off of a device?

6 A Yeah, that's possible.

7 Q When would that happen?

8 A If the tool is not compatible with the device, if the
9 device is severely damaged, or if the device was wiped of all
10 its data and leaving nothing behind.

11 Q Now on cellular devices you can delete files on an iPhone
12 or a Blackberry, right?

13 A Correct.

14 Q When a layperson says the term delete, is that different
15 from when you as a forensic examiner use the term delete?

16 A Yes.

17 Q Can you tell us what the difference is.

18 A When -- in lay terms if you delete a message, say off an
19 iPhone, that message is not able to be seen by the user once
20 it's deleted, but that doesn't mean that the actual message in
21 the phone is deleted at that time. So if we -- in looking at
22 it from a forensic point of view, that could be recovered
23 potentially.

24 Q So when a user hits delete on a phone, usually the user
25 can't see it anymore?

ISOLDA - DIRECT - MR. ROLLE

1 A Correct.

2 Q But you might be able to recover it through your forensic
3 tools?

4 A Yes.

5 Q And how is that the case, that you can recover it even
6 when somebody deletes it?

7 A If the message or say call was deleted, it can just be
8 marked as deleted in -- on the chip and not actually deleted.
9 It gets truly deleted when something over underwrites it or
10 the space has to be reused by the system.

11 Q You said when something gets truly deleted, what do you
12 mean by that?

13 A So if that file that was deleted or that message that was
14 deleted, if something overwrites it, the system needs to use
15 that space that was marked as available, and a new message or
16 new call, a new file overwrites that older one that was
17 deleted, then that new file is going to be present instead of
18 the old one.

19 Q What do you mean by overwrite, what's doing this
20 overwriting you're talking about?

21 A The file system or operating system on the phone chooses
22 where new files are where memory needs to be allocated to.

23 Q Do users -- are users able to decide when overwriting
24 happens?

25 A No.

ISOLDA - DIRECT - MR. ROLLE

1 Q Again what decides that?

2 A The phone's operating system or the file system.

3 Q Is there a frequency with which things are overwritten in
4 cellular devices based on your experience?

5 A It really depends. There is no formula or method to
6 say -- there's no way to exactly tell when it is going to be
7 overwritten.

8 Q What does it depend on?

9 A It can depend on a couple of things, the software that's
10 on the phone, how big the phone memory is, how new the phone
11 is, stuff like that.

12 Q Is there a relationship between the size of the device
13 and how frequently it would need to be overwritten?

14 A Yeah, that's possible.

15 Q How would that relationship work?

16 A Say if there was less memory on the phone and -- there's
17 less memory so more space would be needed to upkeep newer
18 files so more things are getting overwritten since there's
19 less space to be used.

20 Q You talked about an Apple iPhone as example earlier, do
21 those types of devices have large or smaller memories --
22 capacities?

23 A They are currently large, but they also range in size, so
24 you can get different models that have different sizes per
25 iPhone.

ISOLDA - DIRECT - MR. ROLLE

1 Q You mentioned Blackberry earlier. Is Blackberry
2 considered a sort of a modern or common device in your work?

3 A From my experience it's typically an older phone. Some
4 of the models are produced years ago from the ones I've worked
5 on in the past.

6 Q The storage capacity of those older phones, those tend to
7 be larger or smaller than phones today?

8 A Relatively smaller than the phones that are currently out
9 today.

10 MR. ROLLE: I'm going to hand up to the witness
11 what's marked as Government Exhibit 2604 just for
12 identification, judge.

13 THE COURT: Okay.

14 Q Do you recognize this exhibit?

15 A I do.

16 Q What is it?

17 A It's a disk that contains the reports from two phones
18 that I generated.

19 Q How do you recognize this disk to be that?

20 A I verified it and those are my initials after I verified
21 the contents of the disk.

22 Q You're initials are on it?

23 A Yes.

24 Q Does this disk contain true and accurate copies of the
25 reports that you generated?

ISOLDA - DIRECT - MR. ROLLE

1 A It does.

2 Q We'll talk about the reports today. Next to you you
3 should have a binder though. If you could pull that up and
4 we'll look at a couple of different tabs in it today.

5 I'd like you to look at Tab 1, which is Government
6 Exhibit 2605-A for identification.

7 Tab 2, which is Government Exhibit 2605-B for
8 identification, it's pretty long.

9 Tab 3, which is Government Exhibit 2605-C in
10 evidence.

11 And Tab 4 at this point, which is Government
12 Exhibit 2605-D.

13 Do you recognize each of these exhibits?

14 A I do.

15 Q What do you recognize them to be?

16 A This is the PDF report I generated from evidence 1B25.

17 Q Are these excerpts of that larger report you generated?

18 A Yes, correct.

19 Q Are each of these true and accurate copies of excerpts
20 from your larger report?

21 A Correct.

22 MR. ROLLE: Your Honor, we would offer Government
23 Exhibits 2605-A, 2605-B and 26 --

24 THE COURT: One second.

25 2605-B and.

ISOLDA - DIRECT - MR. ROLLE

1 MR. ROLLE: And 2605-D, your Honor. 2605-C is
2 already in evidence.

3 MR. AGNIFILO: We have no objection, Judge.

4 THE COURT: What about 2604.

5 MR. ROLLE: Your Honor, we're not offering the disk
6 itself into evidence, simply marked for identification and
7 authenticated.

8 THE COURT: So I'm admitting 2605-A, 2605-B and
9 2605-D.

10 MR. ROLLE: Thank you, your Honor.

11 (Government Exhibits 2605-A, 2605-B and 2605-D, were
12 received in evidence.)

13 (Exhibit published.)

14 MR. ROLLE: If we could pull up Government
15 Exhibit 2605-A, which is Tab 1 in your binder. We might need
16 to switch the publication.

17 THE COURT: Do you need me to switch it?

18 MR. YOUKILIS: It's up on my screen.

19 THE COURT: And it's public also. I'll restart.

20 Can you call IT.

21 MR. AGNIFILO: The ghost of St. Patrick.

22 THE COURT: Thank you for your patience, members of
23 the jury. Someone from the IT department will be up shortly
24 to assist us.

25 Can you proceed, Mr. Rolle, without the display?

ISOLDA - DIRECT - MR. ROLLE

1 MR. ROLLE: I can. But from here on you out we were
2 going to look at documents, so it may not be particularly
3 helpful to the jury.

4 THE COURT: Okay, then we'll wait a few minutes.

5 MR. ROLLE: Thank you, Judge.

6 (Pause in proceedings.)

7 THE COURT: Please continue, Mr. Rolle.

8 BY MR. ROLLE:

9 Q Mr. Isolda, you can see the document on your screen.

10 A Correct.

11 Q And that is -- what is that document?

12 A This is the summary of the report I generated.

13 MR. ROLLE: If you could make sure the mic is right
14 up close to your mouth so we can all hear you loud and clear.

15 You said this was a summary page of one of your
16 reports?

17 A Correct.

18 Q And if we're looking closely there is a line that says,
19 Evidence Number and 1B25, what's that number?

20 A 1B25 is an internal FBI evidence number to -- that's
21 unique for that specific phone.

22 Q For the specific phone. So then underneath there's
23 source extraction information, and it says Blackberry and then
24 BB9900.

25 A Yes.

ISOLDA - DIRECT - MR. ROLLE

1 Q Is that the type of device this was?

2 A Yes, that's correct.

3 Q So 1B25 was the Blackberry Bold 9900 that you created a
4 report for?

5 A Correct.

6 Q If we can zoom out of that.

7 You said you generated a report and you mentioned
8 something called Cellebrite earlier. It says Cellebrite on
9 the top right.

10 Could you just tell us how Cellebrite relates to
11 this report that we're looking at here.

12 A Cellebrite takes data and it looks at it and deciphers
13 what the extraction has and then makes it easily viewable and
14 reviewable and you're able to generate reports from that.

15 Q When you do that, do you alter the data in any way on the
16 device that you're creating a report for?

17 A No.

18 Q I'd like to look at a couple of parts of this. If we
19 could zoom in on device information and that chart that we see
20 underneath that.

21 What's reflected at this part, sir?

22 A This portion shows the information of the device and
23 anything that was pulled from the extraction was parsed, and
24 this is just general information about the device.

25 Q General information about this phone, this Blackberry?

ISOLDA - DIRECT - MR. ROLLE

1 A Correct.

2 Q Just looking at the -- it says, Legacy Encryption and
3 then two lines below that it says, Tim.Lee.Leissner@gmail.com.

4 A Correct.

5 Q Why does that appear there?

6 A That was an account that was associated with the device
7 and that was taken from the extraction.

8 Q That account was associated with this device?

9 A Correct.

10 Q Underneath that it says device info, days to keep
11 messages, and then it says 30. What's that mean?

12 A That is also -- that can be a setting that is defaulted
13 to the device and it could be saying it's just a default that
14 shows how long messages are allowed to be kept in storage.

15 Q On the device?

16 A Correct.

17 Q Underneath there is a heading, User Account, then a bunch
18 of information. But directing your attention to the second
19 line that says, Email, what's that field for?

20 A Can you repeat the question, sorry.

21 Q The field, it says Email, underneath user account.
22 What's that field for? What's that relate to?

23 A That can be -- that's also an email that was associated
24 with the device.

25 Q What email is listed here?

ISOLDA - DIRECT - MR. ROLLE

1 A It is Capital Advisors. Yes, capitaladvisors@ymail.com.

2 Q So if we turn to the next page, page 2 of Government
3 Exhibit 2605-A. What information is reflected at the top of
4 this page under Contents. We probably need to zoom out.

5 What's all this information here?

6 A This is an overview of what was in the extraction and
7 what Cellebrite parsed from the extraction.

8 Q When you say what Cellebrite parsed, what are you talking
9 about?

10 A Essentially it looks at the data that it's pointed at it
11 and pulls out things so it is easily reviewable such as call
12 logs, chat, contacts. It makes it so the data is easily
13 reviewable and interpretable.

14 Q This is the summary amount of data that was actually able
15 to view and parse?

16 A Correct.

17 Q There is a series of categories, are these all different
18 categories of the type of data it was able to review and
19 parse?

20 A Correct.

21 Q The numbers under the heading included in the report and
22 total, what are those numbers, in gray?

23 A Those are the -- just the amount of entries per data
24 type.

25 Q So Cellebrite totals them up and spits out a number here?

ISOLDA - DIRECT - MR. ROLLE

1 A Correct.

2 Q For example, Call Log, which is the first one, it lists
3 2,415?

4 A Correct.

5 Q What does that number represent?

6 A How many calls were in the call log.

7 Q And so same for chats, that lists five?

8 A Correct.

9 Q That's the total number of chats that Cellebrite was able
10 to parse and find?

11 A Yes.

12 Q Emails, for example, a few lines down, 67, the total
13 number of emails --

14 A Correct.

15 Q -- it was able to parse and find?

16 And then there is text in red with numbers and it
17 says deleted. What's that represent?

18 A That represents how many entries were deleted off the
19 device.

20 Q Deleted by Cellebrite?

21 A No. So it was deleted on the device and it was recovered
22 by Cellebrite and shows that it was a deleted artifact.

23 Q So these are examples of things you talked about earlier
24 where a user might have pressed delete but Cellebrite was
25 still able to find that file?

ISOLDA - DIRECT - MR. ROLLE

1 A Yes.

2 Q Then does Cellebrite mark that as deleted when it finds
3 it?

4 A Correct.

5 Q So the number listed, these are total numbers of deleted
6 items for each category?

7 A Correct.

8 Q I'd like you to turn in your binder -- actually we can
9 also pull it up on the screen. It's Government Exhibit, for
10 identification, 2605-H in your binder, Tab 15, the last tab.

11 Just tell us if you recognize this exhibit.

12 A I do.

13 Q And is it an excerpt of the same report we've been
14 looking at?

15 A It is.

16 Q A true and accurate copy of that excerpt?

17 A Correct.

18 Q What portion of the report is contained in 2605-H?

19 A This is the timeline portion of the report.

20 Q What's a timeline?

21 A A timeline is a timeline that gets put together of all
22 different data types in chronological order.

23 Q And is there a start point and an end point in that
24 chronology in the timeline?

25 A There is.

ISOLDA - DIRECT - MR. ROLLE

1 Q What are those start and end points?

2 A It's the first instance of the first data type going from
3 the first time it sees it, all the way into the last data
4 entry.

5 (Continued on the next page.)

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1 BY MR. ROLLE: (Continuing)

2 Q So is this like the life of the device that's being
3 examined essentially?

4 A It shows a good estimate of when the device was being
5 used.

6 Q A good estimate of when the device was actually being
7 used?

8 A Correct.

9 Q If we can pull up Government Exhibit 2605- H-1 for
10 identification. Can you see that on your screen, sir?

11 A I do.

12 Q Do you recognize that document?

13 A I do.

14 Q Is it the first page of the timeline that we were looking
15 at, 2605-H?

16 A It is.

17 Q Is it a true and accurate copy of that first page?

18 A Correct.

19 MR. ROLLE: Your Honor, we would offer Government
20 Exhibit 2605-H-01.

21 MR. AGNIFILO: No objection.

22 THE COURT: It's admitted.

23 (Government Exhibit 2605-H-01, was received in
24 evidence.)

25 Q Just to orient us a little bit, at the top, it says,

Isolda - direct - Rolle

1 "Timeline," and then there's a number, in parentheses, 4722.

2 What's that number?

3 A That's the amount of entries that are in the timeline
4 feature.

5 Q Now, looking at the chart that appears below, just to go
6 by column, the first column is a number. Is that just the row
7 number for the chart?

8 A Right.

9 Q And then what's "Type"?

10 A Type is the data type.

11 Q The data type?

12 A Yes.

13 Q So what types of data might appear in this field?

14 A It refers back to the summary page that we previously
15 spoke about. As you can see, it has call logs, it has
16 e-mails, messages.

17 Q So it's telling you what type of data you're looking at
18 in each row?

19 A Correct.

20 Q Then under the heading "Direction," what's that?

21 A That shows which way the data was flowing.

22 Q What does that mean?

23 A For example, it was a call. If it was an outgoing call,
24 the device was dialing that number out. If it was incoming,
25 the phone was receiving that call.

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1 Q So it just notes that direction in each point here,
2 whether it was incoming or outgoing?

3 A Correct.

4 Q "Attachments" and "Locations," those two columns, what
5 would appear there?

6 A If there are any attachments associated with that data
7 type, pictures and a message, stuff like that, locations are,
8 if there is a location attributed to that specific data type
9 at the time.

10 Q So; for example, if we took a photograph and it added a
11 geolocation to it, would that appear here essentially if you
12 extracted that?

13 A Yes. Any location attributable to any of the data types
14 shown in the timeline, it would show that.

15 Q And the timestamp, is that just the time of the event
16 that you're looking at?

17 A Correct.

18 Q In that, there's a date first, right?

19 A Correct.

20 Q And then there's a time. Is that in hours, minutes,
21 seconds?

22 A Correct.

23 Q And it will say a.m. or p.m.?

24 A Correct.

25 Q Then in parenthesis, it says something. It says, "UTC

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1 plus zero." What's that?

2 A That's just the time zone.

3 Q What is UTC?

4 A Universal time coordinated, just the base time zone plus
5 zero.

6 Q Base time zone?

7 A Yes.

8 Q Is that the same as eastern time?

9 A No, it's different than eastern.

10 Q It's different than eastern? So what would New York time
11 be in UTC?

12 A It depends on daylight savings, but it's usually minus 4,
13 if I recall correctly, but that would be notated here.

14 Q So if you were -- you would have to convert this "UTC
15 plus zero" time to the correct New York time to know the exact
16 time in New York?

17 A Correct.

18 Q "Party," what information is contained in that column?

19 A That's any of the information of where the message or
20 call or e-mail was coming from or going to.

21 Q So the identity of the sender or receiver for the event?

22 A Correct.

23 Q "Description," what kinds of information would appear in
24 that column?

25 A Description could show the body of an e-mail, it could

Isolda - direct - Rolle

1 show you the header, the subject sometimes.

2 Q And then for some of these on this first page, call log,
3 it just lists a series of numbers, hours, minutes, seconds?

4 A Correct.

5 Q Is that the duration of the call?

6 A Yes.

7 Q And then the last column, it says "deleted," that's the
8 heading?

9 A Correct.

10 Q And then for some of these, it says, "Yes." What's that
11 notating?

12 A That's notating that Cellebrite saw it as a deleted
13 artifact.

14 Q And it does that event by event?

15 A Correct.

16 Q So the last, 9 to 21 on this page, all of those were
17 marked as deleted?

18 A Correct.

19 Q But the two above that weren't?

20 A Correct.

21 Q So just kind of looking at this, you said timeline is a
22 good way to know when a device was actually being used?

23 A Correct.

24 Q Looking at this device, what was the first event for this
25 Blackberry that you've created a report for?

Isolda - direct - Rolle

1 A The timeline reports, the first event was a call log and
2 it was on February 5, 2013.

3 Q February 5, 2013?

4 A Correct.

5 Q So I'd like to go back to -- if you can pull up 2605-B
6 which is in evidence and that's tab 2 in your binder, if you
7 prefer that. What's this excerpt?

8 A This is the call log excerpt from the report.

9 Q And what information is contained in the call log section
10 of the report?

11 A The call log shows all the calls that were on the phone
12 or logged on the phone.

13 Q Now, the top part of this excerpt has some stuff we
14 previously saw but looking at the call log, 2415, is that the
15 total number of calls that Cellebrite was able to identify
16 from this device?

17 A Correct.

18 Q And the first entry is dated March 18, 2046 which is not
19 now. In fact, it's 24 years from tomorrow. Why does that
20 future communication appear?

21 A For that, for that entry, I can't answer. I'm not sure
22 why that's even portrayed that way or being entered that way.

23 Q In the course of extractions, are there sometimes
24 artifacts or technical glitches that get brought into reports?

25 A Sure, yes, there can sometimes be a time conversion that

Isolda - direct - Rolle

1 alters the time.

2 Q And in general, just to orient us in this report, does
3 the call log listed here run in reverse chronological order,
4 so starting from the most recent and going backwards to the
5 oldest?

6 A Yes, it can.

7 Q And so just looking at, can we just take a look at
8 page 1, apart from 2046, 6/22/2014 is in row 3 and then if we
9 jump to page 128 of this exhibit and scroll up, please, the
10 last entry is that same February 5, 2013 entry we just looked
11 at in the timeline?

12 A Correct.

13 Q That's the first call?

14 A Correct.

15 Q Okay. Thanks.

16 Now, if we can go to Government Exhibit 2605-D which
17 is in evidence, it's also tab 3 in your binder, what section
18 of the report is this?

19 A This is the contacts, the contact section of the report.

20 Q So there were 611 contacts recovered from this
21 Blackberry?

22 A Correct.

23 Q And just so we can understand each of the columns again,
24 we have the row number first?

25 A Correct.

Isolda - direct - Rolle

1 Q And then "Contact," does that just list the name of the
2 contact stored on the device?

3 A Yes.

4 Q And the name that's listed there, is that populated from
5 actually what the contact was stored as on the device?

6 A Correct.

7 Q Cellebrite doesn't rename any of the contacts, does it?

8 A No.

9 Q Timestamp would show us the date and time if there was
10 any?

11 A Correct.

12 Q Same as we saw before?

13 A Uh-huh.

14 Q And then "Entries," is that the information associated
15 with the contact that Cellebrite recovered?

16 A Correct.

17 Q The phone number?

18 A Phone number, if there was an e-mail address.

19 Q E-mail address?

20 A Yes.

21 Q "Addresses," would that include any information about a
22 physical address that might have been stored?

23 A If the user put in an address for the contact, it would
24 show there.

25 Q "Notes"?

Isolda - direct - Rolle

1 A Same thing.

2 Q And then "Deleted" is the same as we've seen so far?

3 A Right.

4 Q I'd like to go to page 4 of this exhibit. And just
5 directing your attention to row 165 -- if we can enlarge that,
6 please -- can you see that okay?

7 A I can.

8 Q What's the contact?

9 A The contact name is Eric Kim Loong Tan, gmail.

10 Q And then sometimes there are listings that's called
11 "Source." What's Cellebrite listing here where it says
12 "Source"?

13 A The source is listed as e-mail recent contacts.

14 Q What populates that entry in Cellebrite?

15 A That will, that will tell you where the contact name is
16 being pulled, from what application, where it's saved on the
17 device.

18 Q And then what's the e-mail address listed for that
19 contact, Eric Kim Loong Tan gmail?

20 A The e-mail listed is erickimloong.tan@gmail.com.

21 Q And the further column says, "Yes." That's the deleted
22 column?

23 A Yes.

24 Q So this contact was deleted from the device?

25 A Yes.

Isolda - direct - Rolle

1 Q If we can go to page 7 of this same exhibit, looking at
2 rows 270 and 271, what's the contact listed in 270?

3 A Contact on 270 is Jho Low.

4 Q And then could you just read the phone number associated
5 with that contact?

6 A Sure. It is Home 60125909999.

7 Q And in 271, the contact Jho Sing, is that what it says?

8 A Yes.

9 Q And then the phone number listed there is plus
10 6596418111, is that right?

11 A Correct.

12 Q And then there's a note in that one. Is that in the
13 notes column we looked at earlier?

14 A Correct.

15 Q Where it says "Beef sukiyaki"?

16 A Yes, that's in that column.

17 Q If we can go to page 12, and looking at rows 484 and 485,
18 who's the contact, what's the contact name stored for 484?

19 A Roger Malaysia.

20 Q And what's the phone number listed for that contact?

21 A It's plus 60122386226.

22 Q And who's, what's the contact name listed in 485?

23 A Roger Sing.

24 Q And the phone number?

25 A 6591167797.

Isolda - direct - Rolle

1 Q Thank you. You can take that down.

2 I'd like to show you Government Exhibit 2605-E-06
3 for identification. It's also -- it may be easier to look at
4 it on the screen, but it's also tab 10 in your binder and just
5 tell me if you recognize this document.

6 A I recognize it.

7 Q And is it another excerpt from your report?

8 A It is.

9 Q Is it a true and accurate copy of an excerpt from your
10 report?

11 A Correct.

12 Q For the same device we've been talking about so far?

13 A Correct.

14 MR. ROLLE: Your Honor, we offer Government
15 Exhibit 2605-E-06.

16 MR. AGNIFILO: No objection.

17 THE COURT: E-06?

18 MR. ROLLE: Yes, Your Honor.

19 THE COURT: It's admitted.

20 (Government Exhibit 2605-E-06, was received in
21 evidence.)

22 Q So what is the document? What part of the report is this
23 an excerpt from?

24 A This is the e-mail excerpt from the report.

25 Q E-mail excerpt?

Isolda - direct - Rolle

1 A Right.

2 Q And just to orient us, the first column again is just the
3 row number?

4 A Correct.

5 Q The second column, does that tell us the date and time of
6 the e-mail?

7 A Yes.

8 Q It also tells the sender and the receiver of the e-mail?

9 A Correct.

10 Q And then we talked about "Incoming" and "Outgoing" under
11 "Direction." Is that the same thing you talked about earlier?

12 A Correct.

13 Q And the column to the right of that, is that the body of
14 the e-mail?

15 A Correct.

16 Q And then sometimes it says, "Item was truncated due to
17 length"? That's in blue.

18 A Correct.

19 Q If an e-mail is too long, does Cellebrite just clip it
20 for purposes of this chart?

21 A To make the report look nice and fit well, it truncates
22 the longer e-mails.

23 Q Does it pull the actual e-mail though into its report?

24 A Correct.

25 Q And then, again, the furthest right column, is that the

Isolda - direct - Rolle

1 deleted column?

2 A Correct.

3 Q So looking at row 44, we'll use that as our example, this
4 was, to understand, this was an April 9, 2014 e-mail sent on
5 11:01:33 a.m. with the "UTC plus zero" time stamp you said
6 before?

7 A Yes.

8 Q It's to Ericloong.tan@gmail.com and
9 Capitaladvisors@ymail.com?

10 A Yes.

11 Q And we saw before Capitaladvisors@ymail was associated
12 with this device you were creating the report for?

13 A Correct.

14 Q Was this e-mail from the Eric Kim Loong Tan contact, that
15 was also deleted looking in the right-hand column?

16 A Correct.

17 Q Looking at the rows 47 and 48, let's make those bigger,
18 they look a little different than that one we just looked at.

19 So just looking at the column to the right of the
20 row number, in this one, we don't see a "from." We just see
21 "To JLeissner@gmail.com." Then it says "Judy," but there's
22 not a "from." Do you see that.

23 A Yes.

24 Q But it says "Direction outgoing." Is there a reason why
25 there's not a "from" listed here for the e-mail address?

Isolda - direct - Rolle

1 A Since it's outgoing, Cellebrite's only or the device was
2 only recording where the message was going to, what the e-
3 mail address the message is going to.

4 Q But this is still recording an outgoing e-mail message
5 from the device you were extract, you were creating a report
6 for?

7 A Correct.

8 Q To this JLeissner@gmail.com address?

9 A Yes.

10 Q Same for the entry below that, 48?

11 A Correct.

12 Q So the dates of these two messages, what are those dates,
13 47 and 48?

14 A 47 is September 18, 2013 and for row 48, it's also
15 September 18, 2013.

16 Q And so the times, the first one, that's 3:05:59 p.m. in
17 47 and then 48, it says 2:48:37 p.m., right?

18 A Correct.

19 Q So this is, again, this is in reverse chronological
20 order?

21 A Correct.

22 Q Meaning the e-mail in 48 happened before the e-mail in
23 47?

24 A Correct.

25 Q Could you read the e-mail content for row 48?

Isolda - direct - Rolle

1 A "This girl Fanny Khng said all the bank needs to do is
2 send the updated SWIFT instructions again. Will get you the
3 phone number too just in case needed."

4 Q So that was an e-mail from the device to J. Leissner?

5 A Correct.

6 Q Was that e-mail deleted?

7 A It was.

8 Q And the next e-mail in 47, could you read that?

9 A "Fanny Khng is on plus 6591197197. Best to try her on
10 the cell phone instead of e-mailing."

11 Q And, again, that was from the device to
12 JLeissner@gmail.com account?

13 A Correct.

14 Q And was that e-mail deleted?

15 A It was.

16 Q We can take that down.

17 If you could turn to tab 12 in your binder which is
18 Government Exhibit 2605-E-08 for identification.

19 Do you recognize this document?

20 A I do.

21 Q Is it another excerpt from your report?

22 A It is.

23 Q Is it another set of the e-mail report?

24 A It is.

25 Q A true and accurate copy of this excerpt?

Isolda - direct - Rolle

1 A Correct.

2 MR. ROLLE: Your Honor, we offer Government Exhibit
3 2605-E-08.

4 MR. AGNIFILO: No objection, Judge.

5 THE COURT: It's admitted.

6 (Government Exhibit 2605-E-08, was received in
7 evidence.)

8 Q And just looking at this, again, same format as what we
9 looked at just now in terms of the column and the types of
10 information in each column?

11 A Correct.

12 Q We can take that down.

13 If you could turn to tab 13 in your binder. It's
14 Government Exhibit 2605-F which is in evidence.

15 Do you recognize this as another excerpt from your
16 report that we've been talking about this morning.

17 A I do.

18 Q Do you know what part of the report this is excerpted
19 from?

20 A The timeline.

21 Q The timeline we talked about earlier?

22 A Correct.

23 Q And all of these messages here in 2605-F, were those
24 deleted?

25 A They were.

Isolda - direct - Rolle

1 Q Let me take that down.

2 THE COURT: Mr. Rolle, was that admitted?

3 MR. ROLLE: That was admitted. I can check the date
4 but it was admitted through another witness.

5 THE COURT: Okay.

6 Q If you could turn to tab 14 in your binder, sir. It's
7 Government Exhibit 2605-G for identification.

8 Do you recognize that, sir?

9 A I do.

10 Q Is it another excerpt of the timeline part of the report
11 that we're talking about?

12 A It is.

13 Q Is it a true and accurate excerpt of that part of your
14 report?

15 A It is.

16 MR. ROLLE: Your Honor, we would offer Government
17 Exhibit 2605-G.

18 MR. AGNIFILO: One second, Judge.

19 (Pause.)

20 THE COURT: Is there any objection?

21 MR. AGNIFILO: No, Judge, there's no objection.

22 THE COURT: I'm admitting 2605-G and I confirmed
23 that 2605-F was previously admitted.

24 MR. ROLLE: Thank you, Your Honor.

25 (Government Exhibit 2605-G, was received in

Isolda - direct - Rolle

1 evidence.)

2 Q So, again, same format as what we talked about for the
3 other timeline views?

4 A Correct.

5 Q I just want to direct your attention to 2237, 2238 and
6 2239. Those are the row numbers at the bottom of this page.

7 First, in the column with the date and the time,
8 just to orient us, 2237 is May 26, 2014 at 2:37:49 p.m.?

9 A Correct.

10 Q And then the next two entries in the timeline are after
11 that?

12 A Correct.

13 Q So this timeline is running --

14 A Chronologically.

15 Q -- chronologically, not in reverse?

16 A Correct.

17 Q So 2237 happened first in this series?

18 A Correct.

19 Q So what is 2237? What event in the device is that?

20 A That's an outgoing e-mail.

21 Q From the device to a recipient?

22 A Correct.

23 Q Can you see who the recipient was from this entry?

24 A It's listed as Erickimloong.tan@gmail.com.

25 Q And what's the subject listed?

Isolda - direct - Rolle

1 A The subject is "RE: FWD: Urgent," exclamation point,
2 "WMM Issue."

3 Q And what's the "body"? What does "body" mean?

4 A The body is the content of the e-mail.

5 Q And so what did this e-mail say?

6 A The body is: "Did you get any further update on the
7 below?"

8 Q And then 2238 is the next event in the chronology?

9 A Correct.

10 Q And the date is the same date?

11 A Indeed.

12 Q And how long after that, how long after 2237?

13 A Approximately 20 seconds.

14 Q And what is 2238? What's the event there?

15 A 2238 is a call.

16 Q Call from where or to where?

17 A It's outgoing and it's going to 6591167797.

18 Q And the name for that contact?

19 A Roger Sing.

20 Q Do we know how long that call lasted?

21 A It's listed as 1 minute and 48 seconds.

22 Q And what is 2239? What's that event?

23 A 2239 is also an outgoing call.

24 Q Another outgoing call?

25 A Correct.

Isolda - direct - Rolle

1 Q Same day?

2 A Same day.

3 Q Two minutes after the last call to Roger Sing?

4 A Correct.

5 Q And who is that call to?

6 A It's to Jho Sing.

7 Q That's the contact name?

8 A Correct.

9 Q What's the contact number for Jho Sing?

10 A Plus 6596418111.

11 Q And how long did that call last?

12 A Zero seconds.

13 Q And we can take that down.

14 You testified that you also created a report for
15 another Blackberry, a Q10?

16 A Correct.

17 Q If we could pull up on the screen 2604-A for
18 identification. Can you see that on your screen, sir?

19 A I do.

20 Q Do you recognize that document?

21 A I do.

22 Q What do you recognize it to be?

23 A This is the report for evidence 1824.

24 Q If you can scroll down, since, is this an excerpt of the
25 report for the Blackberry Q10?

Isolda - direct - Rolle

1 A It is.

2 Q Is it a true and accurate copy of the excerpt?

3 A It is.

4 Q If we can pull that up.

5 MR. ROLLE: Your Honor, we offer that, 2604-A.

6 MR. AGNIFILO: No objection.

7 THE COURT: It's admitted.

8 (Government Exhibit 2604-A, was received in
9 evidence.)

10 Q So this looks like an exhibit we saw earlier, is that
11 right?

12 A Correct.

13 Q Is it the summary page for the Blackberry Q10 extraction
14 report?

15 A It is.

16 Q Just looking at evidence number, this one as a different
17 evidence number. Is that because it's a different device?

18 A Correct.

19 Q And the device information listed, it says Blackberry,
20 "BB Q10"?

21 A Correct.

22 Q Could you just scroll down to device information. Does
23 this reflect, again, information about the device that was
24 being extracted?

25 A It does.

Isolda - direct - Rolle

1 Q And under "BB ID User Name," can you just read what that
2 user name is?

3 A It is Tim_Leissner@yahoo.com.

4 Q I'd like to show you a series of additional exhibits for
5 identification on your screen.

6 First -- we can take that down -- 2604-B for
7 identification. Do you recognize that document?

8 A I do.

9 Q Is it an excerpt of the report that we saw the summary
10 page for?

11 A Yes.

12 Q The Blackberry Q10?

13 A Correct.

14 Q And is it an excerpt of the call, is it the call log
15 section of your report?

16 A It is.

17 Q Is it a true and accurate copy of that excerpt?

18 A Correct.

19 Q We'd also like to call up Government Exhibit 2604-C-01
20 for identification. Do you recognize this document?

21 A I do.

22 Q What do you recognize it to be?

23 A This is an excerpt from the report we previously spoke
24 about.

25 Q The Q10 report?

Isolda - direct - Rolle

1 A Correct.

2 Q And is it an excerpt of chats recovered from the phone?

3 A It is.

4 Q Is it a true and accurate copy of the excerpt of the
5 chats?

6 A It is.

7 Q And we'd also like to call up Government Exhibit 2604-D
8 for identification. Do you recognize this document?

9 A I do.

10 Q Is it also an excerpt of the Blackberry Q10 report you
11 prepared?

12 A It is.

13 Q Is it the contact list section?

14 A It is.

15 Q Is it a true and accurate copy of that section of your
16 report?

17 A It is.

18 MR. ROLLE: Your Honor, we would offer at this time
19 Government Exhibits 2604-A, 2604-B, 2604-C-01 and 2604-D.

20 MR. AGNIFILO: One second, Your Honor.

21 THE COURT: Sure.

22 MR. AGNIFILO: Your Honor, we have no objection.

23 THE COURT: They're admitted.

24 (Government Exhibits 2604-A, 2604-B, 2604-C-01 and
25 2604-D, was received in evidence.)

Isolda - cross - Agnifilo

1 MR. ROLLE: Thank you, Your Honor.

2 No further questions for this witness at this time.

3 THE COURT: Cross-examination?

4 MR. AGNIFILO: Yes, thank you.

5 CROSS-EXAMINATION

6 BY MR. AGNIFILO:

7 Q Good morning. Is it Mr. Isolda?

8 A Isolda.

9 Q My name is Marc Agnifilo. I represent Roger Ng. I'm
10 going to ask you some questions. If I ask you a question that
11 you don't understand, feel free to ask me to rephrase the
12 question or ask it a different way and I'm happy to do that.
13 Okay?

14 A Okay.

15 Q You went to Marist College?

16 A Yes.

17 Q In Poughkeepsie?

18 A Yes.

19 Q My daughter goes there. Did you like it?

20 A I enjoyed the school.

21 Q It has a beautiful view of the Hudson, right?

22 A Yes.

23 Q When did you graduate?

24 A 2019.

25 Q And a couple of questions just to follow up on what the

Isolda - cross - Agnifilo

1 government asked you.

2 You said that the best kind of extraction is a
3 physical extraction, the most thorough?

4 A Typically, yes, the most thorough, physical or a full
5 file system extraction.

6 Q And just what did you do for the phones in this
7 particular case, which ones?

8 A I personally didn't extract these devices. I received
9 physical extractions for the devices.

10 Q Okay. So you didn't do the extractions yourself?

11 A Correct.

12 Q Okay. But so someone else in the FBI did it?

13 A Correct.

14 Q And your understanding is that these were physical
15 extractions?

16 A Correct.

17 Q Right? And you mentioned four phones on your direct
18 testimony, three Blackberrys and a Nokia, right?

19 A Correct.

20 Q Did you get physical extractions for all four phones?

21 A I do not believe so.

22 Q Okay. What do you remember getting?

23 A I know that there was these two Blackberrys that had
24 physical extractions. Another device was not extracted and
25 manually went through. And the Nokia, I believe, was also

Isolda - cross - Agnifilo

1 physical but I would have to refer to my notes.

2 Q And did you do an analysis of the Nokia phone as well?

3 A I did not. I just generated a report for that phone.

4 Q But you did generate a report for the Nokia phone?

5 A Sorry. I misspoke. I believe for that phone, the report
6 was generated. I received a report for that phone.

7 Q Okay. All right.

8 A I'd just would refer to them.

9 Q That's okay. I understand.

10 A Sure.

11 Q So we didn't talk about the Nokia phone here at all
12 today, right?

13 A No.

14 Q So let's talk about the Bold, the 9900 Bold. That's the
15 first one that you talked about, the one that we talked about
16 for the most time.

17 A Sure.

18 Q So you said that even if the user of the phone deletes
19 certain messages or e-mails or whatever, you guys at the FBI
20 could use your technology to recover that data?

21 A It could possibly be recovered, correct.

22 Q Okay. And you talked a bit on your direct examination
23 with the government about certain, certain pieces of data that
24 were deleted, and you could tell they're deleted because there
25 was an indication in one of the columns that it had been

Isolda - cross - Agnifilo

1 deleted, is that right?

2 A Correct.

3 Q So let's do this. I want to go to Government
4 Exhibit 2605-E-6. It's already in evidence. You guys
5 discussed that on your direct testimony and we'll pull that up
6 for you. It's in evidence so we can pull it up for everybody.
7 2605-E-6.

8 Okay. And let's focus on the bottom two entries
9 there. Those are the ones you talked about on your direct.
10 Do you see that?

11 A I do.

12 Q Okay. And you said that that "Yes" on the right side
13 that's written in red indicates it was deleted, right?

14 A Correct.

15 Q Let's go up to number 45. Okay? That one was deleted as
16 well, right?

17 A Correct.

18 Q And this, this is -- what is this? Is this -- I never
19 know what's a chat, what's a text. I didn't have that stuff.
20 What is this? What is this called?

21 A This is an e-mail.

22 Q Okay. An e-mail? Great. That one I know.

23 So this is an e-mail. And it indicates that this
24 e-mail was deleted because of the "yes" in the far right,
25 correct?

Isolda - cross - Agnifilo

1 A Correct.

2 Q And this is an e-mail between Tim Leissner and Kimora Lee
3 Simmons, right?

4 MR. ROLLE: Objection.

5 MR. AGNIFILO: It's in evidence.

6 THE COURT: Basis, Counsel?

7 MR. ROLLE: That's not what it says.

8 THE COURT: Okay.

9 Q Okay. Why don't you tell us what this is?

10 A This is an e-mail.

11 Q Okay. From who and to who?

12 A It's reported from Tim_Leissner@yahoo.com to
13 Capitaladvisors@ymail.com.

14 Q Okay. And do you see there, there's an entry there?
15 Let's blow it up just so I can see it a little better where it
16 says from Kimora Lee Simmons. I want to blow that part up.

17 Do you see that says from Kimora Lee Simmons, right?

18 A I do.

19 Q To Tim Leissner, right? That's what it says?

20 A I see that, yes.

21 Q So what is this? Just exactly what are we looking at
22 here?

23 A This is text from the body of the e-mail.

24 Q Okay. So this is text from the body of the e-mail,
25 right?

Isolda - cross - Agnifilo

1 A Correct.

2 Q And this is from Kimora Lee Simmons to Tim Leissner,
3 right?

4 A It states that in the body.

5 Q You say it states that. Is there some hesitation, is
6 there something that we're not touching on that you think,
7 because you said it states that, but it's not that? I'm
8 trying to understand what you're saying.

9 A No, it shows in the body, correct.

10 Q Okay. And this, see a little ways down, it says, "This
11 article was sent to you from the New York Post iPad." Do you
12 see that?

13 A I do.

14 Q And this, this message e-mail was deleted also, right?
15 Let's bring up the whole document so that you can see it. Do
16 you see that on the right?

17 A Yes. Row 45 appears to be deleted.

18 Q That was deleted too. Let's go to GX-2605E-8 which is
19 also now in evidence from your direct testimony. Let's go to
20 39 at the bottom.

21 Okay. Can you see that okay.

22 A I can.

23 Q Okay. And tell us what that is? What is that message?

24 A This is also an e-mail.

25 Q Okay. And it's an e-mail from who to who?

Isolda - cross - Agnifilo

1 A From Ericloong.tan@gmail.com to
2 Capitaladvisors@ymail.com.

3 Q Okay. And let's try and enlarge the data to the right
4 where it says, "We would appreciate if you could advise with
5 regards to," that paragraph. Can we just enlarge that so we
6 can see it a little bit easier.

7 Okay. So the subject there, you said it says,
8 "Urgent: WMM issue." That's what it says, right?

9 A Correct.

10 Q And the body says, "Hi, Eric, as part of our random audit
11 exercise, we require more information pertaining to your
12 recent transaction made." And then there's some details
13 there, correct?

14 A Right. Correct.

15 Q All right. And it goes on to say, "We appreciate if you
16 could advise with regard to purpose of payment, provide full
17 details of payment," and there's a bunch of other things said
18 there. Right?

19 A Correct.

20 Q And just go back to the whole e-mail for a second, all
21 right, this is, this is an e-mail between Eric Tan and the
22 user of the phone, correct?

23 A This is an e-mail incoming from Eric Tan to
24 Capitaladvisors@ymail.com.

25 Q Okay. And this was not deleted, right?

Isolda - cross - Agnifilo

1 A No, it's not.

2 Q Okay. So now let's go to what is in evidence as 2605-B,
3 as in "boy." All right. And let's go to page 82. I think
4 it's 81. It's going to come up as 81.

5 Do you see the bottom of that page there?

6 A I do.

7 Q So where it says "Yes" in red, it means that that
8 particular entry, whatever it was, an e-mail, a text, a call,
9 was deleted, right?

10 A Correct.

11 Q And if there's no "yes" next to it, it wasn't deleted,
12 correct?

13 A Correct.

14 Q So let's look at the bottom of that page. Let's pull up
15 the whole bottom so that you can see that at one point,
16 there's no "Yes" and then there is a "yes." Perfect. Okay.

17 So you see there's no "Yes's" until we get to entry
18 1520 and then there's a "Yes," right?

19 A Yes.

20 Q And then 21 and 22 have "Yes," right?

21 A Yes.

22 Q Let's go to the next page. So it's 82 on the exhibit.
23 There. Okay. And it's all "Yes's" there. Can we get that
24 whole page? All right. Keep going.

25 MR. AGNIFILO: What I'm going to do because I think

Isolda - cross - Agnifilo

1 it's going to be easier, Your Honor, with your permission, is
2 I'm going to show Mr. Isolda the hard copy document rather
3 than paginating through each one.

4 THE COURT: Sure. I believe he has it in his
5 binder.

6 Q Oh, do you have the binder there?

7 A I do.

8 Q So let's do it with a binder. Do me a favor. Go to that
9 page in your binder. I think it's the bottom of page 82. I'm
10 sorry. 83.

11 THE COURT: You're on 2605-B?

12 MR. AGNIFILO: Yes, Judge.

13 Q So take your time and get to page 83 of your binder.

14 (Pause.)

15 Q Okay. All right. So you're looking at page 83?

16 A Correct.

17 Q So that is what we have on the screen just so we're
18 looking at the same thing.

19 A Correct.

20 Q Okay. And suffice it to say, every entry on page 83,
21 entries 1523 to 1541, they've all been deleted, right?

22 A Correct.

23 Q And let's go to the next page, page 83. Do you see that?

24 A Yes.

25 Q Okay. And that's what we have here. Okay. And all the

Isolda - cross - Agnifilo

1 entries there, entries 1542 to 1559, all deleted, right?

2 A Correct.

3 Q Now, do me a favor. Thumb through the rest of that
4 exhibit, and I'm sorry to ask you to do it, it's not that
5 many, all the pages between page 83 and page 129, and my
6 question is aren't all the rest of the entries, every single
7 one of them deleted.

8 (Pause.)

9 A Right.

10 Q Okay. So they're all deleted?

11 A Correct.

12 Q Okay. Let's go to the last page of the exhibit and bring
13 it up for the jury. It's 129 in hard copy and 128 in the
14 trial record. All right. And let's just highlight the last
15 few entries over there just so the jury can see them.

16 All right. Okay. And so you said on direct, this
17 goes in reverse chronological order so if we look at the
18 bottom entry there, 2415, that's the earliest entry in terms
19 of time, correct?

20 A Correct.

21 Q All right. And the earliest entry in terms of time is
22 February the 5th, 2013, fair to say?

23 A Correct.

24 Q And let's now go to page 82 in the hard copy, page 81 in
25 the trial record, and go again, and look at the last four

Isolda - cross - Agnifilo

1 entries. There we are.

2 All right. So what we see, and tell me if this is
3 right, that commencing with, starting with that entry that's
4 1520 on May 23, 2014, every entry was deleted, every single
5 one going back to the first entry on February 5, 2013,
6 correct?

7 A Yes.

8 Q All right. So in other words, there was no picking and
9 choosing through the ones that you saw. It wasn't like some
10 of them were kept and some of them were deleted. On this day,
11 seemingly, that being May the 25th, 2014, everything before it
12 on the phone was deleted?

13 MR. ROLLE: Objection.

14 THE COURT: Basis, Counsel?

15 MR. ROLLE: Form, Your Honor, and personal
16 knowledge.

17 (Continued on next page.)
18
19
20
21
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23
24
25

Isolda - Cross - Agnifilo

1 CROSS-EXAMINATION

2 BY MR. AGNIFILO: (Continuing.)

3 Q If that's what it shows to you.

4 Is that what this data we just looked at means to
5 you?

6 A Can you restate the question?

7 Q Yeah, absolutely.

8 On May the 25th, 2014 -- because you see two
9 entries -- you see an entry for May 25th, 2014 at 15:19;
10 correct?

11 A I do.

12 Q All right. And that's not deleted; correct?

13 A No.

14 Q And then below it is an entry at 15:40 -- I'm sorry,
15 15:20, and it's from May the 23rd, two days earlier, 2014, and
16 that one is deleted; correct?

17 A Correct.

18 Q All right. And I think what we just established -- but
19 you tell me if I'm right -- is that every single entry before
20 that, going to the very first entry on February the 5th, 2013,
21 every single one was deleted.

22 A Correct.

23 Q Okay. Now, I think what you said on direct is -- as you
24 said, the fact that it was deleted, you got them because
25 they're here; right?

Isolda - Cross - Agnifilo

1 A Right.

2 Q And I think you were being asked questions about
3 overwriting; right?

4 Do you remember those?

5 A Sure.

6 Q Okay. And sometimes the data could be overwritten -- is
7 it with a T or D? Overwritten or overridden?

8 A Overwritten.

9 Q With a T, okay.

10 It could be overwritten by new data; right?

11 A Correct.

12 Q Okay. You don't know if that happened here?

13 A No -- well, it's showing that it's deleted, so it wasn't
14 overwritten because it was recovered.

15 Q Okay. So it wasn't overwritten.

16 A Right.

17 Q Right.

18 So everything -- so you recovered data going back to
19 2013 as we saw from the report itself; correct?

20 A Correct.

21 Q Okay. So there's no indication that any data was
22 overwritten; fair to say?

23 A There's no way -- if the data wasn't here, there's --
24 there's -- I can't answer that.

25 Q Right.

Isolda - Cross - Agnifilo

1 To the opposite, it indicates to you the data was
2 not overwritten; it's all here.

3 MR. ROLLE: Objection. Mischaracterizes his
4 testimony.

5 MR. AGNIFILO: No. It's a new question.

6 BY MR. AGNIFILO:

7 Q Is that true?

8 MR. ROLLE: Same objection.

9 THE COURT: Rephrase the question, Mr. Agnifilo.

10 MR. AGNIFILO: Sure.

11 BY MR. AGNIFILO:

12 Q Because the data is here and you just looked at it -- and
13 we all just looked at it -- it was not overwritten?

14 A This current data was not overwritten.

15 Q Now, suffice it to say, what you testified to on direct
16 examination is a very small sampling of what you recovered
17 from this phone; correct?

18 A Correct.

19 Q There are thousands and thousands --

20 MR. ROLLE: Objection.

21 Sidebar, Your Honor.

22 (Sidebar.)

23 (Continued on next page.)

24

25

Sidebar

1 (Sidebar conference held on the record out of the
2 hearing of the jury.)

3 THE COURT: What's the objection?

4 MR. ROLLE: Judge, the Government is objecting to
5 Mr. Agnifilo, again, creating an empty chair in the case. The
6 jury is not entitled to consider evidence that's not -- things
7 that are not in evidence. He can ask the witness do phones
8 contain a lot of information, did you recover a lot, but
9 simply asking this witness about the fact of other
10 inadmissible evidence, which is why Cellebrities do not come
11 into evidence in full -- it's full of hearsay, it's full of
12 irrelevant information, privileged information, information
13 that cannot be entered into a trial -- so to suggest with this
14 question that the jury is not seeing things, that they can't
15 see, he can offer them.

16 THE COURT: I didn't appreciate that that was the
17 question. I thought Mr. Agnifilo was referring to all of the
18 other evidence that has been admitted, but not discussed today
19 with the witness.

20 MR. ROLLE: That has been admitted? I did not hear
21 any link to admissible evidence in this question.

22 THE COURT: Okay.

23 Mr. Agnifilo?

24 MR. AGNIFILO: I think it's fair to bring up to the
25 witness that these are excerpts. These are excerpts, this is

Sidebar

1 not the only thing in the phone. The jury --

2 THE COURT: He testified to that, that these are
3 excerpts.

4 MR. AGNIFILO: Right, but that there's --

5 THE COURT: Right. I'm saying that there's no
6 problem with you asking that these are excerpts, not
7 everything that's considered.

8 MR. AGNIFILO: Right. Okay. That's all I'm trying
9 to do.

10 THE COURT: Right. But asking him whether or not
11 there's thousands and thousands, he probably can't answer that
12 question.

13 MR. AGNIFILO: Well, but he can, because there's
14 actually -- there's entries. There's actual entries.

15 THE COURT: Well, then it creates the issue that
16 Mr. Rolle is objecting to, the fact that some of these are
17 not admissible, so by quantifying what's recovered you're
18 suggesting to the jury that there's evidence that they're not
19 seeing that hasn't been offered when some of that evidence
20 just can't be offered to begin with.

21 MR. ROLLE: And, judge, the quantity is simply not
22 relevant. It's not probative of anything other than the
23 inadmissible point that I made before.

24 THE COURT: Well, it is probative, and I think what
25 Mr. Agnifilo is trying to get at is the Government is picking

Sidebar

1 and choosing what evidence it wants to present to the jury;
2 and, so, he's entitled to do that to some extent --

3 MR. AGNIFILO: Right.

4 THE COURT: -- because while not all the evidence is
5 admissible, I'm sure there are plenty others that are
6 admissible that the Government has not offered. Ultimately,
7 there is an instruction that I will give the jury as to the
8 Government not having to present all the evidence, but he does
9 get to cross-examine him on that.

10 MR. ROLLE: Agree, Judge. I do think, as to the
11 form, as Your Honor elicited, the form raised an improper
12 inference, and it shouldn't be asked that way, and there's a
13 proper way to do it, and we would ask that counsel stay within
14 the bounds of the Rules of Evidence so we can move it along.

15 MR. AGNIFILO: I think I can ask him what he
16 extracted from the phone in terms of raw data. They went
17 through that. I mean, it's -- they marked for identification
18 the overall timeline. I mean, so -- so they actually brought
19 out in their direct examination precisely how many entries are
20 there. I'm not looking to put that into evidence, but I think
21 I can ask him that that's the full total of all the entries in
22 the timeline. They marked the timeline as an exhibit.

23 THE COURT: You can ask him that, but the issue is
24 what are you going to do with that information? And the
25 manner in which you ultimately use it may or may not be

Sidebar

1 proper.

2 MR. AGNIFILO: Just to point out that these are
3 excerpts and that this is not -- I don't want the jury to walk
4 out of here thinking that the only thing in this phone was the
5 stuff that the Government got into --

6 THE COURT: Right.

7 MR. AGNIFILO: -- because that's not true.

8 THE COURT: Right, right, right. Okay.

9 MS. SMITH: Your Honor, if there's other admissible
10 information on the phone that the defense would like to admit,
11 that's something we can discuss.

12 THE COURT: But that's not the issue.

13 MR. AGNIFILO: We would love to.

14 MR. ROLLE: I think I understand Your Honor's
15 ruling, and I would say, the number's in evidence, so the
16 total number has been admitted, so....

17 THE COURT: He can cross him on that.

18 MR. ROLLE: Totally. I just want it to be clear
19 that that is a proper basis to point to, this is the total
20 number, and this is page 1.

21 MR. AGNIFILO: All right. That's all I'll do.

22 THE COURT: Okay.

23 (Sidebar conference ends.)

24 (Continued on following page.)

Isolda - Cross - Agnifilo

1 (In open court.)

2 THE COURT: Please proceed, Mr. Agnifilo.

3 MR. AGNIFILO: Yes, Judge.

4 I believe we marked for identification -- the
5 Government marked for identification in their direct case
6 Government's Exhibit 2605-H for identification, and I would
7 just ask that the first page of that be brought up for the
8 witness.

9 BY MR. AGNIFILO:

10 Q Okay. You can see that?

11 A Correct.

12 Q All right. And I think you discussed this on your direct
13 testimony, this is the timeline of all the different types of
14 data; correct?

15 A Yeah. This is the timeline.

16 Q Okay. And what are the different types of data that
17 comprise the timeline?

18 A It could be anything from calls, e-mails, chats, any
19 locations that were -- that were flagged, stuff like that.

20 Q Okay. And the total number of entries that comprise this
21 timeline of the overall -- I'm sorry -- of the overall data is
22 4,722 entries?

23 A Correct.

24 Q And you agree with me, on your direct testimony, you only
25 discussed a small handful; correct?

Isolda - Cross - Agnifilo

1 A Correct.

2 Q All right.

3 MR. AGNIFILO: Give me one second, Judge.

4 THE COURT: Sure.

5 (Pause.)

6 MR. AGNIFILO: One second. Just the Court's
7 indulgence for one minute.

8 THE COURT: Of course.

9 (Pause.)

10 MR. AGNIFILO: Thank you, sir.

11 I have no more questions, Judge.

12 THE COURT: Thank you.

13 Any redirect?

14 MR. ROLLE: No, Your Honor.

15 Thank you.

16 THE COURT: Thank you.

17 This witness is excused.

18 (Witness excused.)

19 THE COURT: Well, in view of the time, we'll take
20 our morning break for 15 minutes.

21 Please have the next witness ready for when we
22 return.

23 Please remember not to discuss the case with anyone.

24 (Jury exits.)

25 THE COURT: Is there anything else we need to

Proceedings

1 discuss at this time?

2 MR. AGNIFILO: Nothing from us, Judge.

3 THE COURT: Okay.

4 From the Government?

5 MR. ROLLE: Nothing from us, Judge.

6 Thank you.

7 THE COURT: Okay. I will see the parties in
8 15 minutes.

9 I did get cupcakes for the jury. I'm going to send
10 them down now. I think they're all green, though, because of
11 St. Paddy's Day.

12 MS. AMBUEHL: I'm sure it's not his first time
13 giving green cupcakes out.

14 THE COURT: I don't think they'll care.

15 MS. AMBUEHL: That's very nice.

16 (A recess in the proceedings was taken.)

17 (Witness takes the stand.)

18 THE COURT: Please be seated, everyone.

19 Are they all back?

20 THE CLERK: Yes, they are. We're just lining them
21 up.

22 (Jury enters.)

23 THE COURT: Please be seated, everyone.

24 I hope you had a chance to eat your cupcakes.

25 THE JURY: Thank you, Your Honor.

Phillips - Direct - Rolle

1 THE COURT: You're very welcome.

2 We have a new witness with us.

3 Can the witness, please, state his name for the
4 record.

5 THE WITNESS: Sure. It's Gregory Phillips.

6 THE COURT: Can you please stand and raise your
7 right hand.

8 (Witness sworn.)

9 THE COURT: Thank you. Please be seated, and if you
10 could spell your name for the record.

11 THE WITNESS: Sure.

12 THE COURT: You can remove your mask.

13 THE WITNESS: It's G-R-E-G-O-R-Y, and my last name
14 is Phillips, P-H-I-L-L-I-P-S.

15 THE COURT: Thank you very much.

16 Please proceed, counsel.

17 MR. ROLLE: Thank you, Your Honor.

18 (Continued on next page.)

19 **GREGORY PHILLIPS**, called as a witness, having been first duly
20 sworn/affirmed, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ROLLE:

23 Q Sir, who do you work for?

24 A Yahoo, Inc.

25 Q What's your position at Yahoo?

Phillips - Direct - Rolle

1 A I'm a -- my job title is senior legal services
2 specialist.

3 MR. ROLLE: And, if you could, just angle that mic
4 so it's pointed right at your mouth and try to keep your voice
5 up so we can all hear you loud and clear.

6 BY MR. ROLLE:

7 Q How long have you worked at Yahoo?

8 A Twenty-seven years.

9 Q What are your duties and responsibilities currently at
10 Yahoo?

11 A I'm a custodian of records.

12 Q And what do you do in that role?

13 A In that role, I respond to subpoenas and search warrants
14 in response to legal process.

15 Q Could you just tell us, in general terms, what does Yahoo
16 do?

17 A Yahoo is a entertain -- sorry -- a media and technology
18 company; and we provide services such as Yahoo Mail, Yahoo
19 Sports, Yahoo Finance, different media properties on the web.

20 Q You mentioned e-mail?

21 A Yes.

22 Q How does Yahoo offer its email services to users?

23 A It's an online service, and it's accessed through
24 computers and mobile devices.

25 Q Does Yahoo maintain data associated with its email

Phillips - Direct - Rolle

1 accounts?

2 A Yes, we do.

3 Q And user email accounts?

4 A Yes.

5 Q Do Yahoo email accounts have particular domain names like
6 "at something dot com"?

7 A Yes. Two of our most popular domains are yahoo.com and
8 ymail.com.

9 Q How do you go about getting a Yahoo email account?

10 A You would log on to our website and register an account.

11 Q Do you have to pay?

12 A No. A majority of our accounts are free.

13 Q What type of information does a user have to give to
14 Yahoo to get a Yahoo email account?

15 A They would choose an email address and a password, and
16 then they would provide -- we ask for things such as name, zip
17 code, and phone number.

18 Q Is there a minimum amount of information a user has to
19 provide about him or herself when signing up?

20 A Yes. And then there's also optional information that we
21 would ask for to customize their experience.

22 Q The information supplied when you are getting an account,
23 does all that come from the user?

24 A Yes.

25 Q And what information, that a user provides, does Yahoo

Phillips - Direct - Rolle

1 verify?

2 A We don't verify it. The only thing that we may verify
3 would be the mobile number that's provided; we would send a
4 code and have it verified back to us.

5 Q Does that happen with every email account that a phone
6 number is verified on the account?

7 A I'm going to say there was a point in time where we
8 didn't verify everyone, and -- but for every new registration
9 now we require it.

10 Q So, for a time, everything could be user-supplied with no
11 verification?

12 A Correct.

13 Q Do you remember when you started verifying?

14 A I don't have the -- I don't have the specific date.

15 Q So does Yahoo maintain this type of account information
16 after an account has been opened?

17 A Yes.

18 Q Is this information -- you kind of talked through -- part
19 of what's called subscriber information?

20 A Yes.

21 Q And that pertains to a particular account?

22 A Yes.

23 Q Does Yahoo respond -- you said part of your work is
24 responding to requests for information.

25 A Yes.

Phillips - Direct - Rolle

1 Q Are those law enforcement requests?

2 A Yes. Requests made by a search warrant or subpoena or
3 court order.

4 Q So what's Yahoos process for responding to those formal
5 requests by subpoena, or a court order, or a search warrant?

6 A So we have a web portal set up where law enforcement
7 officials may submit their process electronically to us.

8 Q And what happens inside of Yahoo once a request comes
9 in -- a valid request?

10 A So the request comes in, and it's logged into our case
11 management system, and then it's reviewed by an analyst like
12 me.

13 Q So what happens to the user data when a request comes in
14 asking for that user data?

15 A So we would have -- our case management system goes out
16 to our various systems that comprise the Yahoo enterprise, and
17 we would gather that information and then ensure that the data
18 requested is the data that we're going to provide.

19 Q Are there different levels of data that are produced in
20 response to the different types of law enforcement requests?

21 A Yes.

22 Q So not all the same universe of data is produced in
23 response to a subpoena versus a search warrant?

24 A That's correct.

25 Q So if Yahoo gets a valid subpoena for user information,

Phillips - Direct - Rolle

1 what kind of information would Yahoo produce on subpoena?

2 A We would produce subscriber information and IP addresses.

3 Q And what's a D order?

4 A A D order is also known as a court order; and, for that,
5 we would produce email header information which does not
6 include content, in addition to subscriber information and IP
7 addresses as requested.

8 Q So, sorry, on the D order, you would produce -- you
9 called it -- header information along with the subscriber
10 information?

11 A Yes.

12 Q What's header information?

13 A Header information is the to/from date, time -- time zone
14 of an email, but it does not include the subject line, which
15 would be considered content, or attachments, or attachment
16 titles that would also be considered content.

17 Q So you produce the people who received or sent or who
18 were copied on an email, but not the subject line of that
19 email --

20 A Yes.

21 Q -- or the content of the actual email itself?

22 A Yes.

23 Q How can you get that information -- subject line -- in
24 the actual email itself?

25 A So we take a snapshot of the user's mailbox and just get

Phillips - Direct - Rolle

1 the subscriber -- or, I'm sorry, the header information from
2 the email and not the email itself.

3 Q And what information is produced by Yahoo when it gets a
4 valid search warrant?

5 A So for a search warrant, we would produce content
6 information which would include the whole email, including the
7 subject line and the attachments.

8 Q Now, are there ever technical limitations on the data
9 that Yahoo can produce even when it gets something like a
10 valid search warrant?

11 A Yes.

12 Q What are those limitations?

13 A So when we receive a valid search warrant, it's easy to
14 think of it as a snapshot of what's in the member's -- or the
15 user's account at that point in time. So, for example, if I
16 sent an email to my mother and ten -- ten years ago, and then
17 looked at it and deleted it, it would not be in my account
18 today when I would take the snapshot if we got a search
19 warrant for today, so we don't archive or store deleted email.

20 Q So if somebody gave you a search warrant for your email
21 account, for example today, law enforcement wouldn't get that
22 email between you and your mother from ten years ago?

23 A Correct.

24 Q And are users able -- sorry.

25 Are users able to delete the entirety of accounts at

Phillips - Direct - Rolle

1 Yahoo?

2 A Yes.

3 Q And in that circumstance, would data, if it had been
4 deleted in its entirety before the search warrant, in your
5 same example, would that be recoverable?

6 A No, it would not.

7 Q Now, as part of your work, can you validate and
8 authenticate information that Yahoo has produced in response
9 to the types of requests that you just described?

10 A Yes.

11 Q And you are responsible for reviewing and sending out
12 responses to requests?

13 A Yes, I am.

14 MR. ROLLE: If we could pull up for identification
15 Government Exhibit 2552-A.

16 BY MR. ROLLE:

17 Q Do you see that on your screen, sir?

18 A Yes.

19 Q Do you recognize this document?

20 A Yes, I do.

21 Q What do you recognize it to be?

22 A It's a subscriber information that we provided -- that
23 Yahoo provided in response to a legal process.

24 Q Is that a true and accurate copy of information produced
25 by Yahoo in response to such a request?

Phillips - Direct - Rolle

1 A Yes.

2 MR. ROLLE: Your Honor, we offer Government
3 Exhibit 2552-A.

4 MR. AGNIFILO: No objection.

5 THE COURT: Admitted.

6 (Government Exhibit 2552-A, was received in
7 evidence.)

8 (The above-referred to exhibit was published.)

9 BY MR. ROLLE:

10 Q So just to have you explain what we're looking at,
11 there's a bunch of information both in bold and not in bold.

12 What are we looking at?

13 A So this is subscriber information for account Capital
14 Advisors at ymail.com.

15 Q And ymail was one of those domains, you said, that's
16 commonly used for Yahoo email?

17 A Yes. Yes, it is.

18 Q Then it says, below properties used: Mail. What
19 information is contained there?

20 A So that's just saying the service that they're signed up
21 for, which would be the mail service.

22 Q And then Yahoo mail name, that's just another listing of
23 the email address for this account?

24 A Yes.

25 Q There's alternate communication channels, and then some

Phillips - Direct - Rolle

1 numbers. What's that?

2 A So those are phone numbers that were provided to be able
3 to recover a password. If somebody forgot their password, it
4 would allow us to send a code to that phone number to allow
5 them to log in and reset their password, but that didn't
6 happen in this case. It would say verified if that -- if it
7 -- a successful code was sent out and successfully entered
8 back into the system.

9 Q So if it had been verified, it would say verified and not
10 unverified?

11 A Yes.

12 Q Can you just read the two phone numbers that are listed
13 here for this account?

14 A Sure. The first one is 1 (917) 923-4545.

15 Q And the second?

16 A The second one is 84-904405689.

17 Q And then registration IP address, what's that
18 information?

19 A That is the IP address where they were logged in from
20 when the account was registered.

21 Q What's an IP address?

22 A So an IP address is an address of a machine that's
23 connected to the internet.

24 Q An address of a machine?

25 A Yes, a computer. Whether it be a PC or a cell phone,

Phillips - Direct - Rolle

1 when any device is connected to an internet, it gets assigned
2 an IP address.

3 Q That's like the home address for the device?

4 A Yeah. You could compare it to an envelope that would
5 have your street address on it, but it's instead of being your
6 street address, it would be the address of the device
7 connected to the internet.

8 Q And it says account created.

9 Does that list when this account was created within
10 Yahoo?

11 A Yes.

12 Q When was this account, Capital Advisors, created?

13 A November 6 of 2012.

14 Q And then below that, it says full name and some fields
15 for address, which are blank.

16 Are these fields that users can populate with
17 information?

18 A Yes.

19 Q So full names populated with Capital Advisors Limited?

20 A Yes, that's right.

21 Q And same with country, it's Singapore?

22 A Yes.

23 Q That was user supplied?

24 A Yes, it is.

25 Q Time zone, PT?

Phillips - Direct - Rolle

1 A Yes, that would be Pacific time.

2 Q And then birthday and gender are both populated?

3 A Yes.

4 Q And again those are user supplied?

5 A Yes, they are.

6 Q And then business country is SG?

7 A Yes.

8 Q That stands for Singapore?

9 A Yes, it does.

10 Q Again, is that also user supplied?

11 A Yes.

12 MR. ROLLE: If we could pull up Government
13 Exhibit 2551-B for identification -- I'm sorry, 2551-A for
14 identification.

15 BY MR. ROLLE:

16 Q Do you recognize that document, sir?

17 A Yes.

18 Q What is it?

19 A Subscriber details.

20 Q Is this information Yahoo produced in response to a law
21 enforcement request?

22 A Yes.

23 Q Is it a true and accurate copy of that information?

24 A It is.

25 MR. ROLLE: And if we could pull up Government

Phillips - Direct - Rolle

1 Exhibit 2551-B as well at this point.

2 BY MR. ROLLE:

3 Q Do you recognize this document?

4 A Yes.

5 Q Is it also information produced by Yahoo in response to a
6 law enforcement request?

7 A Yes, it is.

8 Q Is it a true and accurate copy of that information?

9 A It is.

10 MR. ROLLE: Your Honor, we would offer Government
11 Exhibits 2551-A, 2551-B at this time.

12 MR. AGNIFILO: No objection, Judge.

13 THE COURT: They're admitted.

14 (Government Exhibits 2551-A, 2551-B, were received
15 in evidence.)

16 (The above-referred to exhibit was published.)

17 BY MR. ROLLE:

18 Q We'll start with 2551-A.

19 This looks different than the Capital Advisors
20 example we looked at?

21 A Yes.

22 Q What are we looking at in this document?

23 A It's a subscriber details for account KC Tan at
24 yahoo.com.

25 Q So if we just scroll down a little bit so we can see user

Phillips - Direct - Rolle

1 information, we see some similar fields under the heading
2 Attribute?

3 A Yes.

4 Q And so are these -- is this subscriber information for
5 the KC Tan 83 at yahoo.com account?

6 A Yes, it is.

7 Q So this one has account status underneath the mail
8 name -- what's that field reflect?

9 A It indicates that the account is currently active.

10 Q Meaning what?

11 A That it's available for use as opposed to suspended or
12 closed, which would indicate an inactive account.

13 Q But if an account was deleted, what would the account
14 status reflect?

15 A There wouldn't be one. If an account is deleted, there's
16 no record.

17 Q No record at all.

18 Registration IP address is the same type of
19 information as you described before?

20 A Yes.

21 Q What's the registration date for this KC Tan 83 account?

22 A It's March 5th, 2009.

23 Q And full name, you said that's user supplied?

24 A Yes.

25 Q What's the full name listed for this account?

Phillips - Direct - Rolle

1 A It's listed as Kim Chin Tan.

2 Q Below, country is listed as MY?

3 A Yes.

4 Q Is that Malaysia?

5 A Yes, it is.

6 Q And zip and postal code is also user supplied?

7 A Yes.

8 Q What's the birth date listed by the user here?

9 A It's listed as January 19, 1942.

10 Q And there's a series of entries underpass word change
11 events with some dates. What information is contained in the
12 password change events field?

13 A So there's a time stamp, so it would be month, day, year,
14 and a time, and then there's also an IP address which would
15 indicate the IP that they were logged into and the password
16 change event occurred.

17 Q What are these events? What is a pass ward change event?

18 A So it would be when you log in, you can -- after you log
19 in to your account, you can change your password to update it
20 for -- generally, people do it for security reasons to have,
21 sort of, digital hygiene so it prevents other people logging
22 in for their account in cases where they can't guess it.

23 Q So this just reflects the dates on which the password was
24 changed for this account from 2013 to 2017?

25 A Yes.

Phillips - Direct - Rolle

1 Q And then recovery phones, what information is contained
2 in that field generally?

3 A So it's generally a mobile phone number.

4 Q And this one is -- what number is listed here?

5 A It's listed as 601-298-590-83.

6 Q And this one says verified, that's the opposite of what
7 we were looking at on the last exhibit?

8 A Yes.

9 Q So this so the user verified this phone number at some
10 point?

11 A Yes, a token was sent to that device and entered and
12 thusly verified.

13 MR. ROLLE: If we could turn to 2551-B in evidence.

14 (The above-referred to exhibit was published.)

15 BY MR. ROLLE:

16 Q What's this document?

17 A It's a mail snapshot summary.

18 Q And how is that different from what we were just looking
19 at?

20 A So it does contain some of the same subscriber
21 information that we were looking at previously, but in
22 addition to that you will see further down in the document,
23 under mail details, it will list the information that was
24 queried for the user's mailbox.

25 Q So this one has more specific information about the

Phillips - Direct - Rolle

1 actual mailbox for this KC Tan 83 account?

2 A Yes.

3 MR. ROLLE: So just going back up to the top,

4 Mr. Youkilis.

5 BY MR. ROLLE:

6 Q In the subscriber details, you said some of this
7 information is the same as what we just looked at in the last
8 exhibit?

9 A Yes.

10 Q I do want to call your attention to one entry that looks
11 a little different. We do see account status that says
12 "active," but underneath that it says "account last active."

13 A Yes.

14 Q What does account last active mean?

15 A So when this document was produced, the last time that
16 the account was logged into was that date.

17 Q What's the date?

18 A January 20th, 2022.

19 Q In recovery phone, we see the same phone number that we
20 saw in the last exhibit?

21 A Yes.

22 Q And this one now says a specific date on which there was
23 a verification for this phone number?

24 A Yes.

25 Q And that was May 1st, 2017?

Phillips - Direct - Rolle

1 A Correct.

2 MR. ROLLE: If we could scroll down a little
3 further.

4 Q So can you explain the mail details section.

5 A So the mail details section lists the date range that was
6 searched on for the mailbox.

7 Q The date range that who searched the mailbox?

8 A That -- when we received the court order in this case, we
9 did a search between a date range of January 1st, 2009,
10 through December 31st, 2015, for any header information
11 contained in the KC Tan 83 at yahoo.com.

12 Q So that search was conducted with those date limitations?

13 A Yes.

14 Q You said you were looking for the header information
15 within that date range?

16 A Yes.

17 Q Again, the headers are the from, to, CC, BCC that might
18 be in this account?

19 A Yes.

20 Q And is it in the account at the time that you execute the
21 search or in the account in the history of the account's life?

22 A It's in the account on the date that the search was
23 conducted.

24 Q So what did the search pull back as to this account under
25 those parameters if we actually --

Phillips - Direct - Rolle

1 MR. ROLLE: We can stay in that portion,

2 Mr. Youkilis.

3 A So it produced the 415 header records.

4 Q So that search found 415 records -- email records?

5 A Yes.

6 Q In the KC Tan 83 account?

7 A Yes.

8 Q And the oldest message it found, is that reflected here?

9 A Yes, it is.

10 Q What was the oldest -- sorry, oldest within the date
11 range you described before?

12 A Yes.

13 Q So between January 1, 2009, and 12/31/2015?

14 A Yes.

15 Q What was the oldest in that range?

16 A March 5th of 2009.

17 Q And then what was the latest in that range?

18 A December 29, 2015.

19 Q So if there were emails that were outside of that
20 December 31st, 2015, date limitation, that wouldn't count into
21 the total here?

22 A Yes, that's correct.

23 Q And if we scroll back up to the top, the -- you mentioned
24 the last log in to this account at the time this form was
25 created was January 20th, 2022, this year?

Phillips - Direct - Rolle

1 A Yes.

2 MR. ROLLE: Just a moment, Your Honor.

3 No further questions for this witness, Your Honor.

4 THE COURT: Thank you.

5 Cross-examination.

6 (Continued on the following page.)

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PHILLIPS - CROSS - MR. AGNIFILO

1 CROSS-EXAMINATION

2 BY MR. AGNIFILO:

3 Q Very briefly. Good afternoon, sir.

4 A Good afternoon.

5 Q My name is Marc Agnifilo, I'm going to ask you a couple
6 of questions.

7 Yahoo has been around for 27 years?

8 A Yes, it's our 27th anniversary this month.

9 Q Were you there when the company started?

10 A Actually I started at a company and we were combined
11 together, I actually started a AOL, which was a competitor at
12 the time, but through mergers and acquisitions we're now
13 called Yahoo Inc.

14 Q Congratulations.

15 A couple of questions for you. Let's go to what's
16 been marked in evidence as Government Exhibit 2551-A, this is
17 one of the things you just spoke a little bit about. If we
18 can just pull that up for the witness.

19 I want to focus us on the part where it says
20 Registration Date. So if we can just blow that up. The
21 registration date is what? Is that the date that the
22 account's created?

23 A Yes.

24 Q So this account is created on March the 5th, 2009, am I
25 right?

PHILLIPS - CROSS - MR. AGNIFILO

1 A Yes.

2 MR. AGNIFILO: Let's go to 2551-B in evidence.

3 We're going to look at the mail detail section. Blow that up.

4 I want to go to oldest message, make that bigger so we can all
5 see it. All right.

6 Q And the oldest message, so this is the oldest message
7 that you guys were able to retrieve when you got the Court
8 order, right?

9 A Within that date parameter.

10 Q And the oldest message is March 5th, 2009, right?

11 A Yes.

12 Q The same day that the account was created?

13 A Yes.

14 Q Let's go back --

15 A Yes.

16 Q -- so I don't want you to have to guess.

17 Let's go back to 2551-A. Keep the date March 5th,
18 2009 in your head.

19 A Yes.

20 Q Right?

21 A Yes.

22 Q So the same date that the account was created?

23 A Yes.

24 Q All right.

25 MR. AGNIFILO: I want to now look at another

PHILLIPS - CROSS - MR. AGNIFILO

1 document that you talked about and it is 2552-A. We'll pull
2 that up for the witness. Let's just go to the top few lines
3 there. Great.

4 Q This relates to an account under
5 Capitaladvisors@ymail.com, right?

6 A Yes.

7 MR. AGNIFILO: If we go down -- let's go down to at
8 least the Account Created entry there. The whole top, the
9 whole top down to that.

10 Q So what this tells you, does it not, is that the
11 capitaladvisors@ymail.com account was created on November the
12 6th, 2012, right?

13 A Yes.

14 MR. AGNIFILO: I don't think I have anything else to
15 ask you. I thank you for your time.

16 THE COURT: Anything further for this witness?

17 MR. ROLLE: No, Judge. Thank you.

18 THE COURT: You're excused. Thank you.

19 THE WITNESS: Thank you.

20 (Whereupon, the witness was excused.)

21 THE COURT: Can you please call your next witness.

22 MR. ROLLE: The government calls Eric Lee.

23 (Witness takes the stand.)

24 THE COURT: Mr. Lee, if you could stand and raise
25 your right hand please.

ERIC LEE - DIRECT - MR. ROLLE

1 (Witness sworn.)

2 **ERIC LEE**, called as a witness, having been first duly
3 sworn/affirmed, was examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: Thank you. Please remove your mask.

6 If you can adjust the mic and pull it as close as
7 possible to you, it actually moves on the stand so you can
8 make it closer so that you can sit comfortably.

9 Can you please state and spell your name for the
10 record.

11 THE WITNESS: Eric Lee. E-R-I-C. Last name Lee,
12 L-E-E.

13 THE COURT: Thank you very much. Please proceed.

14 MR. ROLLE: Thank you, Judge.

15 DIRECT EXAMINATION

16 BY MR. ROLLE:

17 Q Sir, who do you work for?

18 A I work for Google.

19 Q What's your position at Google?

20 A I'm a team -- I manage a team whose responsibility are
21 responding to law enforcement requests for user data and I
22 also appear as a custodian of records.

23 Q How long have you worked at Google?

24 A Almost nine years.

25 Q And as a custodian of records and as part of the team

ERIC LEE - DIRECT - MR. ROLLE

1 you're on, what do you do at Google day to day?

2 A Like I said, we evaluate legal process submitted by law
3 enforcement requesting user data, we review the request and if
4 it's valid we will produce data responsive.

5 Q In general, what does Google do?

6 A Google is an internet service provider. We provide a
7 variety of services including services like email, YouTube,
8 Drive, et cetera.

9 Q What types of services does Google offer to users?

10 A Again, services like Gmail, Search, Contact, et cetera.
11 A variety.

12 Q You mentioned Gmail, is that an email service that users
13 can use?

14 A That is.

15 Q Does Google maintain data about Gmail and user email
16 accounts?

17 A We do.

18 Q Do Gmail accounts use particular domain names @Gmail.com
19 for example?

20 A Yes.

21 Q Are there others that users can decide to use for a Gmail
22 account?

23 A Could you please clarify.

24 Q If you ran a business or you were an enterprise customer,
25 could you use the name of your business as a John Smith at --

ERIC LEE - DIRECT - MR. ROLLE

1 A Yes. We do. We offer an enterprise service that you can
2 create a domain at and it would also use the Gmail features.

3 Q And are Gmail accounts free?

4 A Yes.

5 Q How do you set one up?

6 A You would register for a Gmail account, you would enter
7 basic information and create the account. Information such as
8 your name and your birth date, et cetera.

9 Q Does Google verify any of the information a user inputs
10 to create a gmail account?

11 A We do not verify.

12 Q You could pick anything and say anything in the sign-up?

13 A Could you clarify.

14 Q If you wanted to say you were John Smith, but you were
15 Sally Smith, you could say you were John Smith?

16 A You could.

17 Q So Google maintains that information that a user submits
18 when it signs up for an account?

19 A We do.

20 Q Is that part of what's known as subscriber information?

21 A Subscriber information is what we consider registration
22 type information, so, yes, it would be included in that.

23 Q Once a user has a gmail account, what services can they
24 access automatically?

25 A A Gmail account usually comes with a general suite of

ERIC LEE - DIRECT - MR. ROLLE

1 services. So, for example, like you can receive emails, you
2 might -- you can get access to Drive and other services like a
3 calendar, contacts, et cetera.

4 Q How long does Google store data that's held in a Gmail
5 account?

6 A Are we talking about emails?

7 Q Emails.

8 A So emails are stored indefinitely unless the user in
9 initiates some kind of deletion of those emails.

10 Q So indefinitely unless the user deletes?

11 A Those emails, yes.

12 Q Does Google ever delete accounts of its own volition?

13 A We might terminate an account for -- or suspend or
14 terminate an account if it violates our terms and services for
15 various reasons.

16 Q If the account was doing something that violated Google's
17 terms and services it could get canceled?

18 A That is correct.

19 Q But apart from that an account violating terms of
20 service, it would have to be a user-generated deletion event?

21 A Yes.

22 Q In terms of Google's response to law enforcement
23 requests, do those requests include subpoenas, court orders
24 and search warrants?

25 THE COURT: Slow down, Mr. Rolle.

ERIC LEE - DIRECT - MR. ROLLE

1 Q Did those requests include that you respond to subpoenas,
2 court orders, search warrants?

3 A Yes.

4 Q When Google gets a valid, legal request, law enforcement
5 request, are there different levels of data that would be
6 produced in response to different law enforcement requests?

7 A Yes.

8 Q In response to a subpoena, do you get basic subscriber
9 information about the Gmail account for example?

10 A Yes.

11 Q In response to a Court order, like a D order, would you
12 get header information about an email account?

13 A Yes.

14 Q And with a search warrant, would you get the actual
15 content of emails in the email account?

16 A Yes.

17 Q Are there limitations on the data that Google can produce
18 even in response to a valid search warrant in terms of emails?

19 A Could you please clarify.

20 Q If a user has deleted emails, can Google produce those in
21 response to a search warrant?

22 A We -- if a user deletes their account, we might have
23 information for a couple of days afterwards, but if it is
24 still retained by us we would produce that still but otherwise
25 if it's gone we won't be able to produce that.

ERIC LEE - DIRECT - MR. ROLLE

1 Q If it's gone, it's gone?

2 A That is correct.

3 Q For deleted accounts can you still sometimes get, in
4 response to a search warrant, basic subscriber information
5 that Google may have still retained?

6 A We will retain some basic information even if an account
7 is deleted such as the creation date and the deletion date of
8 the account, but otherwise a lot of the other information is
9 deleted.

10 Q So does Google track the information it produces in
11 response to these law enforcement requests we just talked
12 about?

13 A We do.

14 Q And prior to your testimony, did you have an opportunity
15 to review the hard drive that contained information produced
16 by Google in response law enforcement requests?

17 A I did.

18 Q I'm handing the witness what's marked for identification
19 as Government Exhibit 2755.

20 Do you recognize this item?

21 A I do.

22 Q What is it?

23 A It is a hard drive that contains the files that I
24 reviewed for authentication.

25 Q How do you know this is the same hard drive?

ERIC LEE - DIRECT - MR. ROLLE

1 A It's signed and dated by me on the back of it.

2 Q On the back here?

3 A That is correct.

4 Q Did you review the information on that hard drive to
5 determine if it was in fact authentic information that Google
6 produced?

7 A Yes.

8 Q Did the hard drive, in fact, contain information produced
9 by Google in response to certain law enforcement requests as
10 far back as 2016?

11 A Yes.

12 Q And as part of your work, you can validate and
13 authenticate Google produced information?

14 A I can.

15 Q How can you do that?

16 A What we do at Google is we do what we call running hash
17 values to verify that records that are admitted into evidence
18 are true, accurate copies of productions we've produced.

19 Q Did you do that with information that was contained on
20 the hard drive?

21 A I did.

22 Q If we could pull up Government Exhibit 2754 for
23 identification. You should be able to see that on your screen
24 in just a moment.

25 Do you recognize this Excel spreadsheets?

ERIC LEE - DIRECT - MR. ROLLE

1 A I do.

2 Q What do you recognize the information on it to relate to?

3 A These map out the file paths mapped out to the files I
4 authenticated on the hard drive.

5 MR. ROLLE: Your Honor, we would offer Government
6 Exhibit 2754.

7 MR. AGNIFILO: No objection, Judge.

8 THE COURT: It's admitted.

9 (Government Exhibit 2754, was received in evidence.)

10 (Exhibit published.)

11 Q Just looking at this Excel you said file path, is that in
12 each of these rows is that a file path?

13 A Yes.

14 Q They lead to some document or item that was on the hard
15 drive you reviewed?

16 A Yes.

17 Q And did you confirm that the items reflected in this list
18 here were in fact items produced -- authentic items produced
19 by Google?

20 A Yes.

21 MR. ROLLE: We can take that down.

22 Q I would like to show you now Government Exhibit 2561-A
23 for identification.

24 Do you recognize this document?

25 A Yes.

ERIC LEE - DIRECT - MR. ROLLE

1 Q What is it?

2 A It looks to be a standard subscriber production made by
3 Google.

4 MR. ROLLE: Your Honor, we offer Government
5 Exhibit 2561-A.

6 MR. AGNIFILO: No objection, Judge.

7 THE COURT: It's admitted.

8 (Government Exhibit 2561-A, was received in
9 evidence.)

10 (Exhibit published.)

11 Q So you said this reflects subscriber information for, is
12 it an email account?

13 A It would be for a Gmail account, yes.

14 Q A Gmail account. What account?

15 A Roger.ngl@gmail.com.

16 Q Can you tell if it's an L or a 1?

17 A It could be a 1, I apologize.

18 Q Underneath it says Status, what's the status field
19 reflect?

20 A That means the status of the account when we produced it.
21 So when we produced this account, this account was deleted.

22 Q And what does end of service date, what's that mean?

23 A That would be the date in which the account was initiated
24 to be deleted.

25 Q What's the date that that happened?

ERIC LEE - DIRECT - MR. ROLLE

1 A 2015/3/18.

2 Q So March 18, 2015?

3 A That is correct.

4 Q Can you tell what services -- I think you said before
5 that when you sign up for a gmail account there are certain
6 standard services you get access to; is that right?

7 A Yes.

8 Q Are there other services that you don't automatically get
9 access to but that you have a opt-in to?

10 A Yes.

11 Q What kind of services do you have to opt-in to?

12 A So, for example, you can use Maps, right, without logging
13 in, but you can also connect it so that Maps now is tied to
14 your Gmail account and therefore it may remember places you've
15 been or meant to help your use of the product easier.

16 Q So for the roger.ngl@gmail.com account, the services list
17 all the different kinds of services this account was using?

18 A That is correct.

19 Q For any of these that you can see here opt-in, ones that
20 the user had to opt-in for it to show up here?

21 A I can recognize a couple, but I don't think it will be
22 exhaustive.

23 Q Which do you recognize?

24 A Location history, Maps, Google+.

25 Q And it says Created On and there's a date, is that the

ERIC LEE - DIRECT - MR. ROLLE

1 date that this account was created?

2 A That is correct.

3 Q What's the date that this account was created?

4 A 11/13/2009.

5 Q There's a field for Terms of Service IP, there's just a
6 dash there, what's that field for?

7 A That would have been the creation IP. So because this
8 account is deleted, therefore that IP is no longer available.

9 Q What is Google usually logging with this terms of service
10 IP, what does that even mean?

11 A The IP in which was used at the time to create this
12 account.

13 Q So it logs the IP address at the time of creation and
14 that would be here?

15 A That is correct.

16 MR. ROLLE: We can take that down. I'd like to pull
17 up Government Exhibit 2566-A for identification.

18 Do you recognize this document?

19 A I do.

20 Q What do you recognize it to be?

21 A This is again subscriber information for the Gmail
22 account, in this case it would be KC --

23 Q Just one moment in terms of what it says.

24 MR. ROLLE: Your Honor, we would offer at this time
25 Government Exhibit 2566-A.

ERIC LEE - DIRECT - MR. ROLLE

1 MR. AGNIFILO: No objection.

2 THE COURT: It's admitted.

3 (Government Exhibit 2566-A, was received in
4 evidence.)

5 (Exhibit published.)

6 Q I'm sorry I interrupted you, but you're getting where we
7 want to go.

8 What account is this for?

9 A Kctan9983@gmail.com.

10 Q This one looks a little different than the deleted one we
11 were just looking at. There's a Name, Given Name and Family
12 Name above the email account.

13 Are those user-supplied fields?

14 A That is correct.

15 Q For the name listed for this account was KC Tan?

16 A Yes.

17 Q Can we tell what date this account was created on?

18 A Yes. 5/21/2012.

19 Q So may 21st, 2012, this kctan9983 was created?

20 A Yes.

21 Q Now we do have some numbers after terms of service IP, is
22 that because this account wasn't deleted at the time this was
23 generated?

24 A That is correct.

25 Q What is the IP address listed for the terms of service

ERIC LEE - DIRECT - MR. ROLLE

1 for this account?

2 A 175.142.232.122.

3 Q And just the terms of service, is that -- what are those?

4 Is that the long document you have to say that you've read?

5 A Yes, it is the service -- the terms in which you can use
6 our product for Gmail.

7 Q Does that come in multiple languages?

8 A It does.

9 Q For this terms of service language, what was listed
10 there, is that English, EN?

11 A Yes.

12 Q Is that generated by a user or Google logs that as --

13 A I don't know.

14 Q The birthday, is that user supplied?

15 A Yes.

16 Q What's the date?

17 A January 19th, 1942.

18 Q Services, is that the same field of information we talked
19 about on the last one?

20 A That is correct.

21 Q And Deletion Date and IP there's nothing listed here.

22 A Correct.

23 Q This account wasn't deleted at the time?

24 A At the time of production, no.

25 Q The status at the time was what?

ERIC LEE - DIRECT - MR. ROLLE

1 A Enabled.

2 Q Enabled. What does that mean?

3 A That means it's currently not -- it's currently able to
4 be used, it's enabled to be used.

5 Q So what's the last log-ins, what's that information?

6 A These are the last tracked log-ins for this particular
7 user or when they last logged in to this account.

8 Q Those are sequential, meaning the last three, whenever
9 they occurred, would be listed here?

10 A That is correct.

11 Q And those are August 12th, 2014, before that June 29th of
12 2014, and before that June 25th of 2014?

13 A That is correct.

14 Q And account recovery there's some information listed
15 there. The contact email, that's the same email as this
16 account kctan9983@gmail?

17 A That's correct.

18 Q What's the recovery email?

19 A It would be an email so you can regain access to this
20 particular Google account if you lost access for some reason.

21 Q What's the email address listed there?

22 A Kctan83@yahoo.com.

23 MR. ROLLE: If we scroll down, zoom out for just a
24 moment.

25 Q It says, No user IP logs, under IP activity. Is there a

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1 reason it says that?

2 A We only retain log-in IPs for a certain amount of time
3 until they also get deleted. So that just means that when we
4 responded to the production for this subscriber information,
5 there were no recent log-ins at the time.

6 MR. ROLLE: No further questions at this time,
7 Judge.

8 THE COURT: Thank you. Cross-examination.

9 MR. AGNIFILO: No, I don't have any questions,
10 Judge. Thank you.

11 THE COURT: Thank you. You're excused.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness was excused.)

14 THE COURT: Please call your next witness.

15 MS. AMBUEHL: Your Honor, the government calls Kirk
16 Godby.

17 THE COURT: Please stand and raise your right hand,
18 Mr. Godby.

19 (Witness sworn.)

20 (Continued on the next page.)

21

22

23

24

25

GODBY - DIRECT - MS. AMBUEHL

1 **KIRK GODBY**, called as a witness, having been first duly
2 sworn/affirmed, was examined and testified as follows:

3 THE WITNESS: I do.

4 THE COURT: You may be seated and remove your mask.

5 Please adjust the mic so that it is close to you and
6 please spell and state your name for the record.

7 THE WITNESS: My name is Kirk Godby. K-I-R-K. Last
8 name G-O-D-B-Y.

9 THE COURT: Thank you. I think that mic can be
10 pulled closer to you. We've changed the cover on it.

11 THE WITNESS: Hello, hello testing.

12 THE COURT: Much better. Thank you.

13 Please proceed.

14 MS. AMBUEHL: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MS. AMBUEHL:

17 Q Good afternoon, Mr. Godby.

18 Is there a binder next to you in that seat.

19 A Yes, there is.

20 Q Where do you work?

21 A I work for the Venetian Casino Resort in Las Vegas.

22 Q Is that associated with any hotels?

23 A There's three hotels that sit on the campus of the
24 Venetian Resort, the Palazzo, the Venetian and the Venezia.

25 Q How long have you worked at Venetian in Las Vegas?

GODBY - DIRECT - MS. AMBUEHL

1 A Just over 20 years.

2 Q How long have you worked in the casino industry?

3 A About 35.

4 Q What is your title at the Venetian?

5 A My title is vice president of international marketing.

6 Q You said vice president of international marketing?

7 A That's correct.

8 Q Does that mean part of your job is focused on getting
9 individuals from other countries to come gamble and stay at
10 the Venetian?

11 A That is correct, almost exclusively individuals from
12 Asia.

13 Q As part of the Venetian's marketing strategy, does it
14 track individual's reservations and stays at the property?

15 A Yes.

16 Q Does it also track spending and gambling at the property?

17 A It does.

18 Q At a high level, does the casino track each individual
19 gambler's activity?

20 A As long as they have a Grazie rewards card or loyalty
21 card to show, yes.

22 Q And what's a Grazie or loyalty card?

23 A It's just like any loyalty program, that's just what the
24 Venetian is, an Italian theme to it. It's just a card that's
25 assigned, that's unique with a player number to any gambler

GODBY - DIRECT - MS. AMBUEHL

1 that comes in the property.

2 Q You said each card has a unique number associated with
3 it?

4 A That's correct.

5 Q And do players present that to Venetian employees when
6 they approach, for example, gaming tables?

7 A Yes, they are encouraged to present it, yes.

8 Q While an individual is gambling at a gaming table, what
9 are some of the things that are tracked?

10 A Their name, their casino ID number, the game they're
11 playing on, their average bet, the time they play, and their
12 total what we call buy-in.

13 Q Does the Venetian also keep track of who stays at its
14 hotels?

15 A It does.

16 Q Are both of these types of records, gambling and hotel
17 records used in your marketing work?

18 A They are.

19 Q Why is that?

20 A Obviously, we want repeat business. We want to keep our
21 players satisfied and to keep returning.

22 Q And turning back to marketing for the casino, you
23 mentioned that part of your job was to get people to come to
24 the casino, get them in the door. What is one of the primary
25 ways you would get people to come to the Venetian?

GODBY - DIRECT - MS. AMBUEHL

1 A Usually it's through complimentaries and other incentives
2 we can offer them.

3 Q What are complimentaries?

4 A Complimentaries are what people would refer to freebies,
5 things where you go in and you do not have to pay for, the
6 company provides that complimentary.

7 Q What types of complimentaries might the Venetian provide
8 to a gambler?

9 A We have the whole enchilada, if you will, from room,
10 food, beverage, depends on your level of gaming. It can go to
11 other things, spas, golf, shows, cash back, rebates.

12 Q Is it fair to say that the more the gambler is willing to
13 gamble at the casino, the more complimentaries the casino is
14 willing to provide?

15 A That's correct.

16 Q Does the Venetian have different internal categories
17 assigned to gamblers willing to win or lose certain amounts on
18 any given trip.

19 A Just informally.

20 Q And informally in 2010, what were those categories, if
21 you know?

22 A What we call mass. That just means anybody who walks
23 into the casino and plays and once they're willing to bet --
24 wager or lose more than 20,000 to 50,000, we internally
25 categorize those as a premium mass and anybody who was willing

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1 to lose more than 50,000 in a visit we call those premium.

2 Q So premium mass was anyone willing to lose more than
3 20,000 in a trip up to about 50,000?

4 A That's correct.

5 Q And once you hit that 50,000 mark the Venetian would
6 categorize them as premium?

7 A That's correct.

8 Q As part of your time working for the Venetian, did you
9 come to know of an individual from Malaysia named Jho Low?

10 A I did.

11 Q Was Jho Low considered one of these premium customers?

12 A Very much so.

13 Q How many times did you personally meet Jho Low?

14 A Probably personally once or twice.

15 Q Do you know when those one or two times would have been?

16 A Would have been approximately between 2010 and 2015.

17 Q How did you come to meet Jho Low?

18 A As part of my job responsibilities I tend to, as we have
19 premium players who come in the property, I meet and greet
20 them, shake their hands, say hello to them and thank them for
21 their patronage.

22 Q Do you think these one or two times you met him were in
23 these same passing ways?

24 A Yes.

25 Q Based on your experience, was Jho Low someone who tried

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1 to go unnoticed during his trips to Las Vegas?

2 A No, quite the opposite.

3 Q What was your impression of Jho Low?

4 A He was extremely extravagant. Traveled with an extensive
5 entourage and every time he came had requests for his gaming
6 activities that were parallel to none.

7 Q When you say parallel to none, can you just give us an
8 example?

9 A Like, for instance, he made like requests where when he
10 wanted to gamble in some of our high-end salons, he wanted
11 disco balls hung from the roof, he wanted dance floors, DJs,
12 things of that nature which, frankly, I've been there 20 years
13 no other customer has every requested that type of stuff.

14 Q So that's unusual even by Vegas standards?

15 A That's correct.

16 Q Have you ever met the defendant in this case Ng Chong Hwa
17 or Roger Ng?

18 A Not that I recall.

19 Q Separate from your review of records, had you ever
20 previously heard of Ng Chong Hwa?

21 A No.

22 Q As part of your work at the Venetian, have you become
23 familiar with how the Venetian maintains its records to
24 gambling, hotel accommodations and complimentaries?

25 A Yes.

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1 Q Please take a look at the documents that have been marked
2 in your binder as Government Exhibit 2841-A.

3 THE COURT: Is that 2-8.

4 MS. AMBUEHL: 2841A, that's appearing at Tab 1. And
5 then also 2841-C through 2841-G appearing at tabs three
6 through eight of your binder. I'll give you a second to look
7 at those.

8 A Okay.

9 Q Are these true and accurate copies of Venetian records
10 relating to Ng Chong Hwa, Jho Low, Tan Kim Loong and Taek Howe
11 Low?

12 A Yes.

13 MS. AMBUEHL: The government moves to admit
14 Government Exhibit 2841-A, and also Government Exhibits 2841-C
15 through Government Exhibit 2841-G.

16 MR. INTRATER: No objection, your Honor.

17 THE COURT: They're admitted.

18 (Government Exhibit 2841-A, was received in
19 evidence.)

20 (Government Exhibits 2841-C through 2841-G, were
21 received in evidence.)

22 Q Mr. Godby, prior to your testimony did you have an
23 opportunity to review records relating to any trips for Roger
24 Ng or Ng Chong Hwa at the Venetian?

25 A No.

GODBY - DIRECT - MS. AMBUEHL

1 Q You were not able to review any records relating to Ng
2 Chong Hwa at the Venetian?

3 A I mean, subsequent to our January deposition from there,
4 yes, that's when I became aware and reviewed the records, yes.

5 Q You mentioned a January deposition, are you just
6 referring to a prior time that you spoke with the government?

7 A That's correct.

8 Q It was not a deposition --

9 A It was not a deposition.

10 Q -- is that correct?

11 A It was not.

12 Q Were you able to review records relating to Ng Chong Hwa?

13 A Yes.

14 Q How many trips did you identify by Ng Chong Hwa to the
15 Venetian?

16 A Just one recorded.

17 Q When was that trip?

18 A It was in November of 2010.

19 Q Please take a look at Government Exhibit 2841-A at Tab 1
20 of your binder, which is already in evidence.

21 What is this, Mr. Godby?

22 A It is what we call, it's a patron writing summary. It's
23 a snapshot of this particular patron's gambling and
24 complimentary history as recorded by our various systems.

25 Q Does this record at times pull in information from both

GODBY - DIRECT - MS. AMBUEHL

1 the gambling and hotel records at the Venetian?

2 A It does.

3 Q To whom does this record relate?

4 A Ng Chong Hwa.

5 Q Does the information contained in that first column
6 toward the middle of the page relate to a trip in
7 November 2010?

8 A It does.

9 Q Underneath the date in the row labeled Time/Game, it
10 shows 02:19/Baccarat, what does that indicate?

11 A Yes, again this is a rating summary so it summarizes all
12 his gambling and complimentaries during his stay. So what
13 that represents is that during this particular gaming trip he
14 played for two hours and 19 minutes and with the slash
15 Baccarat, that means he exclusively played on the game
16 Baccarat.

17 Q What is Baccarat?

18 A A game of chance in Las Vegas much like Black Jack,
19 roulette, craps.

20 Q Is it a table game?

21 A It's a table game.

22 Q And directly underneath that in the line labeled Average
23 Bet, it shows 3,878. What does that indicate?

24 A It's a computer calculation of all the various individual
25 rating cards that were prepared and it just summarizes that

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1 what his average bet would have been for the culmination of
2 his two hours and 19 minutes of play.

3 Q You mentioned rating cards, what are rating cards?

4 A Ratings card, the way these documents get entered into
5 the system, they are manual observations by our table games
6 personnel, they have a card that they record the information
7 on and then hand it to what we call a pit clerk, who types it
8 into our what we call our ACS.

9 Q A little further down in that column in the line labeled,
10 Win/Loss it shows 22,500L. What does that indicate?

11 A That's the estimated win/loss of his particular gambling
12 trip and the L is loss to the patron. So that would reflect
13 that he gambled and lost 22,500 for that particular stay.

14 Q If you skip another line and look at actual comp dollar
15 sign, it shows 2,375. What does that indicate?

16 A Those are the individual complimentaries that were
17 charged against his play that were as part of the hotel folio.

18 Q So that I understand, this record is a summary which
19 shows Ng Chong Hwa gambled during this visit for two hours, 19
20 minutes, playing only Baccarat, with an average bet of \$3,878
21 and a loss of \$22,500; is that correct?

22 A That's correct.

23 Q Based on this approximately 20,000-dollar loss, would Ng
24 Chong Hwa have fallen within the Venetian's internal category
25 of premium mass?

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1 A He would have.

2 Q Does this record show comps provided for this stay?

3 A It does.

4 Q And is that totaling approximately \$2,375?

5 A That's correct.

6 Q Please turn to the document marked as Government
7 Exhibit 2841-C at Tab 3 of your binder, which is already in
8 evidence.

9 What is this, Mr. Godby?

10 A Yes, this is the supporting record that we just looked
11 previously at the rating summary. This is the detail of the
12 gaming that rolls up into that summary.

13 Q And to whom does this record relate?

14 A The same individual Ng Chong Hwa.

15 Q The last document we looked at showed two hours and 19
16 minutes of gambling and you're saying this just provides the
17 detail behind that period of gambling for this trip?

18 A That's correct.

19 Q If we look at the column titled Date, are these dates
20 generated from observed gambling sessions?

21 A That's correct.

22 Q Let's take a look at the gambling detail in the bottom
23 row now.

24 When did this session of gambling start?

25 A It started on November 29th of 2010, starting at

GODBY - DIRECT - MS. AMBUEHL

1 3:40 a.m.

2 Q How can you tell that's 3:40 a.m.?

3 A Yeah, this is just a photocopy of our system, but by it
4 being dark that refers to A.M. The gray version or the
5 lighter version is a P.M. designation.

6 Q Where was Ng Chong Hwa playing at that time?

7 A Yeah, the game tables is identified as BA00201. We
8 assign every slot machine, every table game with a unique
9 asset number so we know where the play occurred.

10 Q How long did he stay at the Baccarat table?

11 A Yes, the next column over it will be a summary of the
12 time he played for one hour and 20 minutes.

13 Q According to this record, what was his total buy-in
14 during this gaming session?

15 A Again, the very far right hand column under total buy-in
16 it will say \$64,000.

17 Q Let's look at one row up, November 29th, 2010. Based on
18 your explanation, did that gaming session start at 7:30 p.m.?

19 A That's correct.

20 Q Where was that located?

21 A It was on the same table. The asset assigned is Baccarat
22 table 00201.

23 Q How long did it last?

24 A That one lasted 40 minutes.

25 Q If we look to the third and final gaming session on

GODBY - DIRECT - MS. AMBUEHL

1 November 30th, what time did that gaming session start?

2 A It started at 5:11 a.m.

3 Q Was it the same Baccarat table --

4 A Yes.

5 Q -- we've just been discussing?

6 A Yes, the same asset, that's correct.

7 Q Please turn to the document marked as Government
8 Exhibit 2841-D at Tab 4 of your binder, which is already in
9 evidence.

10 THE COURT: For identification?

11 MS. AMBUEHL: I'm sorry, your Honor?

12 THE COURT: It's already in evidence.

13 MS. AMBUEHL: Yes.

14 Q Do you have that, Mr. Godby?

15 A Yes, I do.

16 Q Is this another one of those patron rating summaries
17 showing summary data relating to gambling at the Venetian?

18 A That's correct. It's the same information we previously
19 reviewed just with a different patron.

20 Q And which patron does this relate to?

21 A Low Taek Jho.

22 Q Do you know that individual as Jho Low?

23 A Jho Low, as he was commonly referred to.

24 Q Does that first column, again, show a November 2010 trip?

25 A It does, yes.

GODBY - DIRECT - MS. AMBUEHL

1 MS. AMBUEHL: If you need to adjust mic it might be
2 a little high, whatever is comfortable for you.

3 THE WITNESS: Okay.

4 Q The time -- can you see that up there?

5 A Yes.

6 Q The time game listed here shows 01:30/MULT.

7 What does that mean?

8 A Yes, what that means is that during that entire trip he
9 had a rated time of playing for an hour and 30 minutes. The
10 slash MULT, multi that means he played more than one type of
11 game.

12 Q What's the average bet shown for this trip?

13 A The next line down from that line we just discussed was
14 \$111,469.

15 Q Do you see what the win/loss shown for this trip is?

16 A Yeah, like four or five lines down it will show win/loss
17 of 1,750,000 with an L, which that reflects the patron lost
18 1,750,000.

19 Q And what is actual comp dollar sign, the actual
20 complimentary listed for this trip?

21 A Yeah, two columns down it will show 136,998.

22 Q If you'll please turn to the document marked as
23 Government Exhibit 2841-E already in evidence at Tab 5 of your
24 binder.

25 A Yes.

GODBY - DIRECT - MS. AMBUEHL

1 Q Is this another record showing the details of those
2 gambling sessions at the Venetian?

3 A Yes, it's the detail which we just saw the summary in the
4 prior exhibit.

5 Q And it's the detail of this summary for Mr. Jho Low?

6 A That's correct.

7 Q If you take a look at 11/29/2010, what is the first
8 gaming session listed there at the bottom?

9 A At the bottom on 11/29/10 he started playing at 4:40 a.m.
10 Again, he's playing on the same asset number, Baccarat 00201.

11 Q How long did he play?

12 A He played for 49 minutes.

13 Q What was his buy-in?

14 A \$4 million.

15 Q On November 29th, 2010, did he have another gaming
16 session starting at 7:30 p.m.?

17 A Yes, 7:30 p.m., that's correct.

18 Q Is it at that same Baccarat table?

19 A Same Baccarat table.

20 Q How long did it last?

21 A Nineteen minutes.

22 Q Please turn to the document marked as Government
23 Exhibit 2841-F already in evidence at Tab 6 of your binder.

24 A Yes.

25 Q Is this another record showing the details of gambling at

GODBY - DIRECT - MS. AMBUEHL

1 the Venetian?

2 A It is, just with a different individual.

3 Q What individual does this relate to?

4 A Low Taek Howe.

5 Q If we look at the bottom of the page, November 29th,
6 2010, there is a session that appears to start at 7:30 p.m.;
7 is that correct?

8 A Yes, 7:30 p.m. on Baccarat asset number Baccarat 00201.

9 Q Is the same Baccarat table we've seen in everyone's else
10 entries?

11 A That's correct.

12 Q How long did it last?

13 A Forty minutes.

14 Q What was the total buy-in listed for that session?

15 A 50,000.

16 Q Is that \$50,000?

17 A Yes, it's in the far right column under the bottom
18 number.

19 Q Would you please turn to the document marked as
20 Government Exhibit 2841-G already in evidence at Tab 7 of your
21 binder.

22 Is this another record showing the details of
23 gambling at the Venetian?

24 A Yes, it is different individual.

25 Q Who does this record relate?

GODBY - DIRECT - MS. AMBUEHL

1 A This one is Tan Kim L, which I believe is short for Loong
2 as I reviewed this paperwork previously.

3 Q So based on your review of Venetian records, you know
4 that Tan Kim L is also known as Tan Kim Loong?

5 A That's correct.

6 MS. AMBUEHL: Mr. Youkilis, if you could please turn
7 to the second page of this exhibit.

8 Q Mr. Godby, if you look at the gambling session starting
9 November 29th, 2010.

10 A Yes.

11 (Continued on the next page.)
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Godby - direct - Ambuehl

1 BY MS. AMBUEHL: (Continuing)

2 Q When does that first gambling, when does that gambling
3 session start?

4 A It started at 3:40 a.m. on November 29th.

5 Q Where did it take place?

6 A The same asset number, Baccarat 00201.

7 Q And how long did it last?

8 A 48 minutes.

9 Q What was the total buy-in listed there?

10 A Listed 411,000.

11 MS. AMBUEHL: Mr. Youkilis, if you can please turn
12 back to the first page of this exhibit.

13 Q Do you see another gambling session starting November 29,
14 2010 at 5:20 a.m.?

15 A That's correct.

16 Q Is that on that bottom line of that record?

17 A That's correct.

18 Q And, again, what Baccarat table does that gambling
19 session relate to?

20 A That table 00201.

21 Q And how long did it last?

22 A 30 minutes.

23 Q Was Tan Kim Loong gambling at that same Baccarat table at
24 7:30 a.m.?

25 A That's correct.

Godby - direct - Ambuehl

1 Q That's represented in the line above the 5:20 entry?

2 A That's correct.

3 Q Does this record also show Tan Kim Loong returning to
4 that same Baccarat table on November 30th at about 5 a.m.?

5 A That's correct.

6 Q Have you had an opportunity to review guest portfolios
7 for the hotel associated with the Venetian with regard to this
8 November 2010 trip?

9 A I have.

10 Q As part of that review, did you see guest portfolios for
11 Ng Chow Hwa, Jho Low, Tan Kim Loong and Taek Howe Low?

12 A That's correct.

13 Q As part of your review of these records, were you able to
14 determine that they stayed at the casino as part of the same
15 group?

16 A Yes, they were all coded to the same group code, that's
17 correct.

18 Q As part of these records as a whole, were there among
19 other things expenses or hotel stays, food and beverage?

20 A That's correct.

21 Q Based on your review of these portfolios, were all of
22 those expenses provided as complimentary to the guests?

23 A That's correct.

24 Q So that means any expenses listed on their portfolios for
25 that hotel stay were provided free of charge?

Godby - direct - Ambuehl

1 A That's correct.

2 Q Going back quickly to the gaming records, based on your
3 review of those gambling records we just saw, were Ng Chow
4 Hwa, Jho Low, Tan Kim Loon gambling for various periods of
5 time at that same Baccarat table the morning of November 29,
6 2010?

7 A Yes.

8 Q Did your review of these records also show that Ng Chow
9 Hwa, Jho Low, Tan Kim Loong and Taek Howe Low went to that
10 same Baccarat table at 7:30 p.m. on November 29th and gambled
11 together?

12 A That's correct.

13 Q And did your review of these records also show that
14 during the morning of November 30th, at approximately 5 a.m.,
15 Tan Kim Loong and Roger Ng were gathering together, gambling
16 together at same Baccarat table?

17 A That's correct.

18 MS. AMBUEHL: No further questions.

19 (Continued on next page.)
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Proceedings

1 THE COURT: Do you --

2 MR. INTRATER: Thank you, Your Honor.

3 THE COURT: It is almost lunch time so the question
4 is whether you want to cross now or after lunch.

5 MR. INTRATER: I don't want to hold anybody from
6 their lunch, Judge.

7 THE COURT: Okay. I assume you have more than 5,
8 10 minutes of cross?

9 MR. INTRATER: I actually don't know but if we could
10 break now --

11 THE COURT: Sure.

12 MR. KAPLAN: -- I think I'd be better able to
13 respond.

14 THE COURT: We'll break for lunch. Please be back
15 at a quarter to 2. Please remember not to discuss the case
16 with anyone.

17 (Jury exits.)

18 THE COURT: The witness may step down.

19 (Witness steps down.)

20 THE COURT: Please be seated, everyone.

21 I would like to be able to update the jury on where
22 we are. So if the parties could tell me, if the government
23 can tell me how many more witnesses, how much longer you
24 anticipate your case will take.

25 MS. SMITH: Your Honor, we may discuss it a little

Proceedings

1 bit more at lunch. I think we have six more witnesses and I
2 think right now, we're projecting we should be able to rest by
3 the end of the day on Wednesday, possibly into Thursday, but
4 like I said, we're going to discuss. We're still discussing a
5 couple of stipulations with the defense which may change, add
6 one or two witnesses, so we'll do a better analysis at lunch
7 and come back, but that's sort of our tentative timing right
8 now.

9 THE COURT: Okay. So I'll hear from the parties
10 after lunch.

11 MR. AGNIFILO: Very good.

12 MS. SMITH: Thank you.

13 THE COURT: Mr. Muldoon was able to resolve his, he
14 worked things out with his employer so he should be able to
15 stay with us.

16 MR. ROLLE: Thank you, Your Honor.

17 (Luncheon recess.)
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Proceedings

1 AFTERNOON SESSION

2 (In open court; jury not present.)

3 THE COURT: Sorry for the delay. Please be seated.

4 Any further update from the parties?

5 MS. SMITH: So, Your Honor, we think we have

6 potentially up to seven witnesses left. I think I had said

7 six, and I think our estimate of being done on the end of the

8 day on Wednesday is right, though, obviously it depends on the

9 length of cross for those witnesses. So, you know, we can

10 continue to discuss with defense counsel, and some of those

11 stipulations, and give a further update on Monday, but I think

12 that's where we are now.

13 THE COURT: Okay. And then, Mr. Agnifilo?

14 MR. AGNIFILO: Yes, Judge. So if the Government

15 ends up resting on Wednesday, I think we would go Thursday and

16 probably Monday, possibly Tuesday, but I don't see going past

17 Tuesday for that week.

18 THE COURT: Okay.

19 MR. AGNIFILO: Let's see what date that is.

20 THE COURT: So what I'll do is I'll tell the jury --

21 let me just pull up my calendar. I keep getting the days

22 confused. So today is the 17th. That would be --

23 MR. AGNIFILO: -- the 29th.

24 THE COURT: -- 29th. So we'll expect that they'll

25 be charged by the 29th. Okay. I will let them know that at

Proceedings

1 the end of the day.

2 MR. AGNIFILO: Yes, Judge.

3 THE COURT: Can you bring them in?

4 THE COURTROOM DEPUTY: Sure.

5 THE COURT: Is there something else, Ms. Smith?

6 MS. SMITH: I just didn't know if that gives a day
7 for closings and rebuttal, or --

8 THE COURT: Well, I didn't think about that.

9 I assume --

10 MS. SMITH: I just don't want to over promise.

11 THE COURT: I will tell them that testimony will be
12 concluded by the 29th, and we'll take it from there.

13 And the jury instructions, where are the parties
14 with that?

15 MR. AGNIFILO: We gave the Government our proposed
16 instructions -- I don't know, three or four days ago -- and
17 we're going to keep talking, and obviously we have to, kind
18 of, put the pedal to the metal.

19 THE COURT: Yes, you should get it to me this
20 weekend.

21 (Jury enters.)

22 (Witness resumes the stand.)

23 THE COURT: Please be seated, everyone.

24 I hope you had a good lunch.

25 We will continue with the cross-examination of this

Godby - Cross - Intrater

1 witness.

2 Please proceed, counsel.

3 MR. INTRATER: Thank you so much, Judge.

4 CROSS-EXAMINATION

5 BY MR. INTRATER:

6 Q Good afternoon, Mr. Godby.

7 A Hi.

8 Q My name is Zach Intrater. I'm one of the lawyers
9 representing Roger Ng.

10 Everything you testified on direct happened in
11 Vegas; right?

12 A That's correct.

13 Q But it hasn't stayed in Vegas. Sorry.

14 A Is that a question?

15 Q So you met Jho Low; correct?

16 A That's correct.

17 Q And you characterized him on direct as being a very flashy
18 individual.

19 A That's correct.

20 Q How flashy was Roger Ng?

21 A I don't recall meeting him.

22 Q You told the FBI when you met with them, I think in
23 January of this year --

24 A I had a teleconference with various individuals in
25 January. I believe the FBI was on the call.

Godby - Cross - Intrater

1 Q Okay. And you told them that Jho Low was -- you
2 characterized him as a "want-to-be celebrity;" is that right?

3 A That's correct.

4 Q Did you characterize Roger Ng any particular way?

5 A I never recall meeting him.

6 Q Okay. Jho Low wore gold suits, I think you told him?

7 A It was something extravagant. I can't -- it was
8 conspicuous, whatever it was. I just recall when he came out
9 of the limo, it was like, wow, this was -- he was -- it was
10 something -- I don't know, gold lame or designer conspicuous
11 consumption-type stuff. It was just something that was
12 memorable.

13 Q But Roger Ng, you have no idea what kind of suit he wore.

14 A That's correct.

15 Q Okay. Now, the Government showed you several exhibits on
16 direct examination.

17 Do you remember that?

18 A That's correct.

19 Q Okay. And one type of exhibit that they showed you was
20 called a Patron Rating Summary.

21 Do you remember that?

22 A That's correct.

23 Q Okay. And I think that they showed you a Patron Rating
24 Summary for Roger Ng -- I think you called him Ng Chong Hwa --
25 and that was GX2841-A. I just want to show it to you.

Godby - Cross - Intrater

1 A Okay.

2 Q It will come up on the screen, hopefully.

3 A Yes.

4 Q Do you see that there?

5 A (No verbal response.)

6 Q And I think that the -- you mentioned that there was a
7 total win/loss.

8 Do you see there's a row that says win/loss?

9 A That's correct.

10 MR. INTRATER: I don't think it's up for the jury.
11 There we go.

12 BY MR. INTRATER:

13 Q So you see that win/loss row there?

14 A Yes, sir.

15 Q And the total is \$22,500; right?

16 A Yes, sir.

17 Q Now, there's no -- there's a line that says "buy-in
18 cash."

19 Do you see that?

20 A That's correct.

21 Q But that one is blank; right?

22 A That's correct.

23 Q And then there's a line that has an asterisk and it says
24 "total," but that's also blank; right?

25 A That's correct.

Godby - Cross - Intrater

1 Q And then the Government showed you Government's Exhibit
2 GX2841-D. Now, that was a similar document -- this Patron
3 Rating Summery -- but just for Jho Low, not for Roger Ng;
4 right?

5 A That's correct.

6 Q And --

7 MR. INTRATER: Do we have that one up? Okay.
8 Great.

9 BY MR. INTRATER:

10 Q So this one has a win/loss for Jho Low -- that same
11 line -- and you go all the way over to the end to the right
12 column, and could you just read what number -- I think it's
13 actually bolded.

14 What's the number there for Jho Low?

15 A It is 999 months, 25,509,760 loser.

16 Q Now, you are not an accountant; right?

17 A I am. I'm a CPA.

18 Q Oh, you are. Even better. Okay, that's great.

19 So which one of those numbers is bigger?

20 A Which numbers are you comparing, sir?

21 Q The 22,500 or the 25 million?

22 A The 25 million, sir.

23 Q Okay. All right.

24 And the buy-in total, that asterisk, that's the
25 total buy-in number; right?

Godby - Cross - Intrater

1 A Correct.

2 Q Okay. And the total buy-in number for Jho Low is what?

3 A You're talking about the 11/28/10 trip or for the life
4 to --

5 Q Lifetime.

6 A That is 86,624,900.

7 Q Okay. That's for Jho Low?

8 A That's correct.

9 Q 86 million?

10 A That's correct.

11 Q Now, you were also asked about a particular gambling
12 session that took place, I think, November 29th, 2010, and
13 November 30th, 2010.

14 Do you remember that?

15 A That's correct.

16 Q By the way, the casinos, do they track everybody this
17 way?

18 A They track anybody who presents a player card looking for
19 complimentary, so once they're playing, they will be evaluated
20 for future offerings; but if you come there and do not want to
21 be rated or you do not want -- you want to stay incognito,
22 those players are rated up until they come to a -- what would
23 be a currency transaction reporting-type situation. That's a
24 cash transaction over \$10,000.

25 Q Okay. So -- and you noted on direct that on

Godby - Cross - Intrater

1 November 29th, 2010, both Roger Ng and Jho Low were playing
2 baccarat at the same table; is that right?

3 A Yes, sir.

4 Q Okay.

5 MR. INTRATER: So let's just pull up Government's
6 Exhibit 2841-E, and so on the row that's just above the part
7 that's blacked out, it says 11/29/2010, and the start is 4:40,
8 and the time is 49 minutes; right?

9 A That's correct.

10 Q So Jho Low arrives at this table at 4:40 in the morning;
11 right?

12 A He started playing at 4:40 in the morning.

13 Q Started playing at 4:40 in the morning and plays for just
14 under an hour -- 49 minutes.

15 A Yes, sir.

16 Q So that means he stops playing at 5:30 in the morning?

17 A Approximately, yes.

18 Q Just --

19 A Yes.

20 Q Okay. So he comes at 4:40 and he leaves at 5:30.

21 MR. INTRATER: Can we just bring up GX2841-C,
22 please.

23 Q And this is that same Patron Rating detail but for Roger
24 Ng.

25 Do you remember seeing this one on direct as well?

Godby - Cross - Intrater

1 A Yes, sir.

2 Q So he -- Roger Ng starts playing -- this is the last line
3 there. Roger Ng starts playing at 3:40 in the morning and
4 plays for an hour and 20 minutes. So he shows up at 3:40 a.m.
5 and plays until 5:00 a.m.

6 A Yes, sir.

7 Q So fair to say Roger Ng and Jho Low, while they're
8 playing at the same table, they didn't start playing together,
9 and they didn't finish playing together; correct?

10 A That's correct.

11 Q Okay. I just want to go back for one moment to GX2841A.
12 Okay.

13 MR. INTRATER: Do you think we can just blow up the
14 rightmost column, Ms. Silverstein, the 999 months there.

15 Okay. I don't think we have the whole thing.

16 BY MR. INTRATER:

17 Q Well, I think it's a little cut off, but I think that the
18 point will come through, I hope.

19 That column -- that column is called "999 months."

20 A In other words, the life-to-date number, yes, sir.

21 Q So that's the whole lifetime of that player.

22 A Of him being rated under that account number, yes, sir.

23 Q And you do 999 months because that's the most number of
24 months that you can come up with, I suppose.

25 A That's the way the program is.

Godby - Cross - Intrater

1 Q Okay. Okay.

2 Right under 999 months, do you see that there's a
3 notation that says 1T?

4 A One trip.

5 Q Could you tell the jury what that means, please?

6 A It means his total life to date with a rated play under
7 that account number, we had one trip.

8 Q He had just one trip?

9 A That's correct.

10 Q This is for Roger Ng; right?

11 A Ng Chong Hwa, that's right.

12 Q Okay. And that one trip, that was in 2010, not 2012;
13 right?

14 A That's correct.

15 MR. INTRATER: Okay. Nothing further.

16 THE COURT: Any redirect?

17 MS. AMBUEHL: No, thank you. Your Honor.

18 THE COURT: You're excused.

19 Thank you.

20 (Witness excused.)

21 THE COURT: Please call your next witness.

22 MS. SMITH: Your Honor, the Government calls Robert
23 Amenta.

24 (Witness takes the stand.)

25 THE COURT: Please stand and raise your right hand.

Amenta - Direct - Smith

1 (Witness sworn.)

2 THE COURT: Please be seated and state and spell
3 your name for the record.

4 You can remove your mask.

5 THE WITNESS: Thank you.

6 THE COURT: You can also pull the mic closer to you.
7 You can move the bottom; it physically moves.

8 THE WITNESS: My name is Robert -- Roberto Amenta,
9 A-M-E-N-T-A.

10 THE COURT: And is Robert, R-O-B-E-R-T.

11 THE WITNESS: T-O, Roberto.

12 THE COURT: Roberto. Thank you.

13 Please proceed, counsel.

14 (Continued on next page.)

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Amenta - Direct - Smith

1 **ROBERTO AMENTA**, called as a witness, having been first duly
2 sworn/affirmed, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SMITH:

5 Q Good afternoon, Mr. Amenta.

6 A Good afternoon.

7 Q Where do you work?

8 A I work at the Federal Reserve Bank of New York.

9 Q How long have you worked at the Federal Reserve Bank of
10 New York?

11 A I started in November of 1993.

12 Q Is that also referred to as the New York Fed.

13 A It is.

14 Q Where is the New York Fed located?

15 A 33 Liberty Street in downtown, New York.

16 Q What's your current position at the New York Fed?

17 A I'm currently the deputy chief investigator.

18 Q Broadly speaking, what is the New York Fed?

19 A The New York Fed is one of 12 reserve banks that, along
20 with the board of governors, in Washington, D.C. make up the
21 Federal Reserve system -- the Central Bank of the United
22 States.

23 Q And there are other reserve banks in other parts of the
24 country?

25 A Correct. There's 12 of us.

Amenta - Direct - Smith

1 Q And is the New York Fed different in any way from the
2 other Federal Reserve banks?

3 A So while the New York Fed may not be the largest, as far
4 as geography that it covers, that it's responsible as a
5 supervisor -- banking supervisor, it has the most assets under
6 its bank. We are the largest financial institution with
7 assets -- largest Federal Reserve Bank with assets under its
8 -- its control.

9 Q Why is the, sort of, largest Federal Reserve Bank with
10 assets located in New York?

11 A Sure.

12 It's our -- you know, it's because we're located in
13 New York. It's the financial district center of the United
14 States.

15 Q You said that you're a deputy chief investigator.

16 A Correct.

17 Q Is that in any particular section of the New York Fed?

18 A Yes. So it's in the Financial Intelligence and
19 Investigations Unit. We call ourselves the FIIU at the
20 Reserve Bank's legal group.

21 Q And what is the FIIU?

22 A The Financial Intelligence Investigations Unit, so we
23 investigate enforcement matters. So supervision cases in
24 which there may be an issue with bank secrecy, anti-money
25 laundering, or sanction cases, so we do those types of

Amenta - Direct - Smith

1 investigations in the FIIU.

2 Q How long have you held the position as deputy chief
3 investigator?

4 A I was nominated December of 2019.

5 Q And what are your current duties or responsibilities in
6 that position?

7 A So they vary. As I mentioned, we work on enforcement
8 matters. Those are cases on financial institutions that run
9 afoul of Bank Secrecy Act, anti-money laundering, or
10 sanctions. I'm also responsible for the frauds and scams
11 website at the Federal Reserve, so I'm the curator of that
12 websites, and those are advanced fee scams in which the
13 Federal Reserve name is misused, or investment frauds in which
14 the federal reserve name is misused. And then I'm also
15 responsible for a group of analysts that have responsibility
16 for producing FedWire funds transfer, so subpoena compliance.

17 Q I'm going to circle back to those, kind of, three buckets
18 in a minute.

19 Before I do, have you held other positions at the
20 New York Fed?

21 A In November of '93, I started as a paralegal, and then
22 senior paralegal, investigator, and then senior special
23 investigator, up to my current title deputy chief
24 investigator.

25 Q Have all those positions been within the FIIU?

Amenta - Direct - Smith

1 A No. It's within the legal group, so the titles of
2 investigator are within the FIIU.

3 Q Did you work anywhere before you joined the Federal
4 Reserve in 1993?

5 A I did.

6 So I worked at a law firm in downtown Brooklyn
7 called Cullen & Dykman.

8 Q What was your position there?

9 A Paralegal.

10 Q What's your educational background?

11 A I went to college at St. Francis College of Brooklyn, and
12 I am a certified fraud examiner and a certified anti-money
13 laundering specialist.

14 Q What is a certified fraud examiner?

15 A So the Association of Certified Fraud Examiners is one of
16 the largest associations of antifraud professionals where they
17 provide training and education, and so you have to pass an
18 exam, and you have to maintain educational credits to be in
19 good standing.

20 Q How long have you been a certified fraud examiner?

21 A December of 2002.

22 Q And do you hold any other -- I think you said anti-money
23 laundering specialist as well.

24 A Anti-money laundering, so it's -- the association is
25 called ACAMS, the Association of Certified Money Laundering

Amenta - Direct - Smith

1 Specialists; and, again, you have to pass an exam. The focus
2 there is different than certified fraud examiner. It's more
3 anti-money laundering, again, more sanctions, Anti-Bank
4 Secrecy Act. I passed that exam in July of 2016.

5 Q So going back to your current position at the New York
6 Fed, I think you said your job covers three main areas: The
7 website, FedWire subpoena compliance, and enforcement work.

8 So starting with the first one, the frauds and scams
9 website, what do you do for them?

10 A So we warn the public on known Federal Reserve scams so
11 that, hopefully, it saves them the heartache of losing money
12 or being intimidated into frauds. There's an option on the
13 websites to report fraud to us, and so me and my staff, we
14 have responsibilities to responding to questions as we get
15 them, and so that's the frauds and scams websites.

16 Q And then you said the second, sort of, bucket of
17 responsibilities involves FedWire subpoena compliance.

18 A Correct. And so I have a group of analysts who assist in
19 responding to subpoenas, legal process for a product that the
20 Federal Reserve has called FedWire funds transfers.

21 Q And just at a very high level, what is fed wire?

22 A FedWire is an electronic communication. It's a wire
23 transfer which an individual -- an originator will send money
24 to a beneficiary.

25 Q What does it mean to do subpoena compliance for FedWire?

Amenta - Direct - Smith

1 A So we -- if you are served with a subpoena, you have a
2 legal responsibility to look for responsive transactions and
3 then produce them.

4 Q And then I think you said the third bucket was sort of
5 working on various enforcement work and investigations, so
6 what do you do in that?

7 A In conjunction with our examiners, so the Federal Reserve
8 is also the bank supervisor, and so we have a group of
9 examiners that go in and make sure that the bank is safe and
10 sound. If the bank runs afoul of that and it requires some
11 type of an action, then it would come to the investigator
12 group -- the FIIU. Most of our cases are based on Bank
13 Secrecy Act violations, anti-money laundering violations, and
14 sanctions cases; and those sanction cases are ones in which
15 the U.S. Treasury has a group called the Office of Foreign
16 Asset Control in which they put sanctions on either a country,
17 a specially-designated national, weapons of mass destruction,
18 or drug kingpins. And so financial institutions -- obviously,
19 as the word says, you are not allowed to do transactions with
20 folks that are designated, and if financial institutions run
21 afoul of that, then our group would get involved in
22 investigating it on the civil side.

23 Q And in connection with your work at the New York Fed, do
24 you ever teach or conduct training sessions for others?

25 A Yeah. So that's one thing we do pretty often is we are

Amenta - Direct - Smith

1 asked in public and private sector dialogues to speak on wire
2 transfers, to speak on how funds move. I have done it
3 internationally and domestically.

4 Q And what kind of teaching sessions have you done
5 domestically?

6 A Same thing. It's mostly how wires move, how the U.S.
7 financial system works in as far as banking, and the flow of
8 money internationally.

9 Q Did FedWire produce records in response to subpoenas in
10 this case?

11 A Yes.

12 Q And other than, sort of, the subpoena response and
13 testifying here today, have you done any work on the case
14 involving the defendant, Roger Ng?

15 A I have not.

16 Q So during your 29 years of experience at the New York
17 Fed, including the teaching experience that you've described,
18 have you become familiar with the international banking
19 system?

20 A I have.

21 Q And, in particular, are you familiar with how
22 transactions in U.S. dollars are originated, processed, and
23 completed globally?

24 A Yes.

25 Q Are you also familiar with correspondent banking?

Amenta - Direct - Smith

1 A Yes. That's the concept of moving money internationally
2 is through these relationships that banks have, and that
3 relationship is called correspondent banking.

4 Q Are you specifically familiar with correspondent banking
5 involving United States-based correspondent banks?

6 A Yes.

7 Q Are you familiar with the systems used to clear and
8 settle correspondent banking transactions in the United States
9 such as FedWire and CHIPS?

10 A I am.

11 Q Have you ever testified before on these subjects?

12 A I have.

13 Q Approximately how many times?

14 A About 15 times.

15 Q Have you ever been qualified as an expert witness before?

16 A I have, but in the context of fraud.

17 Q And when you say "in the context of fraud," what do you
18 mean?

19 A Again, those anti -- those misrepresentations about the
20 Federal Reserve and Federal Reserve products.

21 Q Have you ever sought to be qualified as an expert witness
22 and been denied qualification?

23 A No.

24 MS. SMITH: Your Honor, at this time, the Government
25 would move to qualify Mr. Amenta as an expert in the

Amenta - Direct - Smith

1 international banking system, including how money is
2 transferred to, from, and through the United States through
3 wire transfers; How U.S. dollar transactions are originated,
4 processed, and completed; and correspondent banking
5 transactions.

6 THE COURT: Is there any objection?

7 MR. AGNIFILO: One second, Judge.

8 MR. INTRATER: No, Judge. No objections.

9 Thank you.

10 THE COURT: The witness is accepted as an expert in
11 the fields identified.

12 BY MS. SMITH:

13 Q Mr. Amenta, what are the various methods that you use to
14 transfer money internationally?

15 A So some of the key components of that is a SWIFT message,
16 and that's how financial institutions speak to each other.
17 And then the two predominant ways in the United States -- the
18 two predominant wire transfer systems -- are, one, FedWire in
19 which the Federal Reserve is the owner of, and the other one
20 is our competitor called CHIPS.

21 Q And in addition to, sort of, wire transfers, are there
22 any other ways to transfer money internationally?

23 A Yeah. So there's international ACH, but, again, the two
24 predominant systems being used to transfer wire transfers is
25 FedWire and CHIPS.

Amenta - Direct - Smith

1 Q And what, at the very basic level, is a wire transfer?

2 A A wire transfer is an electronic communication between
3 the originator, their financial institution, and the
4 beneficiary in their financial institution.

5 Q And is it an electronic transfer of funds?

6 A Correct.

7 Q And when you talk about funds, is that just another way
8 to talk about money?

9 A Currency, correct.

10 Q What's an example of, sort of, a wire transfer that you
11 might encounter in your everyday life?

12 A So if you were to send money -- so ACHs are more -- if
13 you think about how you get paid and how you pay your bills,
14 then you're referring to an ACH, but when you're talking about
15 sending large -- or sending money to an individual that you
16 need to use the wire transfer system for, that could be
17 FedWire or CHIPS, especially if it's an international
18 transaction.

19 Q And when someone goes to wire money internationally, can
20 they do it in any currency that they want?

21 A Yes.

22 Q Are there any particular benefits to conducting wire
23 transactions in U.S. dollars?

24 A So U.S. dollars is the standard -- I don't want to say
25 gold -- it's the standard of how business is done worldwide.

Amenta - Direct - Smith

1 It's the strength of the U.S. dollar and the fact that the
2 U.S. dollar is the currency used by a lot of countries. So,
3 yes, the U.S. dollars is what's used predominately in
4 international business.

5 Q Are there any other benefits to transacting in U.S.
6 dollars, such as stability?

7 A Correct. So the stability of the U.S. Government and the
8 U.S. dollar, stability of the systems that are being used to
9 do those transactions, FedWire and CHIPS.

10 Q And we talked a little bit about correspondent banks
11 before.

12 What is a correspondent bank?

13 A So the definition for a "correspondent bank" is
14 provisions of banking in which large international banks --
15 correspondent banks -- provide banking services to other
16 financial institutions, and we call those respondent banks, so
17 the customers of the bank, so a bank banking a bank. It could
18 offer a lot of different services; it could offer
19 check-clearing, it can offer foreign exchange, but the one
20 predominant things that we have seen in my years with regards
21 to correspondent banking is the fact that it's always a must
22 to have cross-border wire transfers. It's the thing that a
23 foreign bank is going to want to get access to the United
24 States.

25 Q And what does it mean to be a U.S.-based correspondent

Amenta - Direct - Smith

1 bank?

2 A So you are going to have -- you are the financial
3 institution that has access to FedWire, so you will have a
4 master account agreement at the Federal Reserve to do those
5 services, or you will have an account at CHIPS. It's my
6 experience that the financial institutions that have FedWire
7 access also have CHIPS access.

8 Q And what circumstances do parties seeking to transfer
9 funds in U.S. dollars need a U.S.-based correspondent bank?

10 A So the foreign banks cannot do a FedWire. You have to
11 have a correspondent in the U.S., and so it could be a bank --
12 a domestic bank or a foreign bank in the United States that
13 can do it, so a foreign bank does not have direct access to
14 FedWire or wire transfers for us.

15 Q And so you mentioned FedWire a couple of times.

16 Can you just tell us a little bit more about how
17 that works?

18 A Sure.

19 So a financial institution -- so we can talk about
20 it in two ways. One would be a pure domestic transaction --
21 an individual would go to his bank and will ask the bank to do
22 a process for a recipient also in the United States, so that's
23 just the financial institution going to FedWire. FedWire has,
24 since April of 2000 -- April 29th of 2007, has -- April 27,
25 2009, has processed all its transactions through two

Amenta - Direct - Smith

1 facilities -- that would be Texas and New Jersey -- and so the
2 FedWire servers would be notified of this transaction, and
3 then it would go over to the recipient's bank, and they would
4 get credited in the correspondent bank on the originating side
5 would be debited.

6 Q And so that's for a domestic transaction?

7 A That's right.

8 Q And FedWire is something offered by the Federal Reserve?

9 A That's correct.

10 Q How does FedWire work for international transactions?

11 A So respondent bank would need access to FedWire, as
12 mentioned before, so the way -- I think I mentioned this --
13 the way banks speak to each other is through a SWIFT
14 message -- and we're hearing a lot about SWIFT these days --
15 so SWIFT message is a notification from a bank to another bank
16 to make a payment happen; and so once the bank in the United
17 States receives that SWIFT message, it will initiate that
18 payment either via CHIPS or SWIFT -- CHIPS or FedWire; and
19 then, again, it will be -- go over to the respondent's
20 correspondent bank, and then over to the foreign bank for
21 further credit to the recipient.

22 Q Does a correspondent bank have to be a member of FedWire
23 to use the system?

24 A It does. The correspondent bank does; the respondent
25 bank does not.

Amenta - Direct - Smith

1 Q The members, do they have an account with FedWire? How
2 do they, sort of, communicate with the system?

3 A Yes, they have terminals dedicated to FedWire. You have
4 to be a master account -- you have to have a master account
5 with the Federal Reserve, and so these big correspondent banks
6 have -- I think there's over 7,000 participants of FedWire.
7 They have access to our systems.

8 Q And so all the participants are located in the United
9 States?

10 A Correct.

11 Q And are all funds handled by FedWire handled or processed
12 in the United States?

13 A Correct.

14 Q You said the servers for FedWire are located where?

15 A In Dallas, Texas and East Rutherford, New Jersey.

16 Q Where do the various financial institutions have their
17 master accounts?

18 A It would be at the reserve bank in their jurisdiction.
19 So the big international banks -- the JPMorgans and the Bank
20 of New York, the Citigroups -- they would have it at the
21 New York Fed.

22 Q And do the servers that process the wires in Texas and
23 New Jersey then communicate with the master account wherever
24 it is?

25 A Right. The reserve banks in the district would be

Amenta - Direct - Smith

1 notified to debit and credit.

2 Q And so any major financial institution with a master
3 account in New York would be communicating from New York to
4 those servers?

5 A Correct.

6 Q Approximately how many transactions does FedWire process
7 a day?

8 A Between 500,000 and 600,000 transactions a day.

9 Q And what's the, sort of, volume of transactions in
10 dollars?

11 A A little over 3 trillion a day.

12 Q So \$3 trillion in transactions a day?

13 A Correct.

14 Q You've mentioned CHIPS a number of times.

15 A Correct.

16 Q What's CHIPS?

17 A CHIPS is the competitor FedWire, also a wire transfer
18 system. It is my understanding that they do, possibly,
19 300,000 transaction a day, also in the trillions.

20 Q And are all funds handled -- fund transfers handled by
21 CHIPS also processed in the United States?

22 A That's correct.

23 Q And is it similar to FedWire in that you have to be a
24 member to participate?

25 A Correct.

Amenta - Direct - Smith

1 Q You said earlier that a lot of banks have both FedWire
2 and CHIPS.

3 A Yes.

4 Q Why is that?

5 A Because they want the option of choosing the wire
6 transfer system that they want to -- if they want -- it's
7 almost -- you know, I think the analogy would be, do you want
8 to send something via Federal Express or UPS, so big banks
9 want the option of choosing the wire transfer system.

10 Q Are there systems other than FedWire and CHIPS that let
11 you transfer money in U.S. dollars outside of the United
12 States?

13 A There are systems that transfer U.S. dollars outside of
14 the United States.

15 Q And what systems are those?

16 A So there's a system called CHATS, C-H-A-T-S. That's in
17 Singapore -- the Monetary Authority of Singapore -- and it is
18 administered by HSBC.

19 Q We talked about the volume of transactions for CHIPS and
20 FedWire, which were in the multiple trillions of dollars.

21 What's the approximately transactions per day of
22 CHATS?

23 A I think the last I saw, it was about 40,000 transactions
24 a day in the billions.

25 Q And that you said is administered by HSBC?

Amenta - Direct - Smith

1 A Correct.

2 Q So they would need to be on the transaction to show that
3 it was a CHATS transaction.

4 A The way I understand it is that they are -- they are the,
5 sort of, like -- they act like the correspondent bank for the
6 CHATS transactions.

7 Q And FedWire and CHIPS handle the processing for the vast
8 majority of U.S. dollar transactions?

9 A That's correct.

10 Q And that's between foreign banks?

11 A That's correct.

12 Q So let's see if we can, sort of, make this even a little
13 bit clearer.

14 I'm going to show you what's been marked for
15 identification as Government's Exhibit 160.

16 A Okay.

17 Q What is this document?

18 A It's a diagram of a correspondent banking transaction
19 with a foreign leg to it.

20 Q Is it similar to training materials that you used at the
21 New York Fed?

22 A Similar, yes.

23 Q And does it fairly and accurately portray the transfer of
24 funds through the United States via FedWire or CHIPS --

25 A It does.

Amenta - Direct - Smith

1 Q -- for a transaction between two foreign banks in U.S.
2 dollars?

3 A It does.

4 MS. SMITH: Your Honor, we offer into evidence
5 Government's Exhibit 160.

6 MR. INTRATER: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Government Exhibit 160, was received in evidence.)

9 (The above-referred to exhibit was published.)

10 BY MS. SMITH:

11 Q Okay. So, again, now that it's actually in evidence and
12 everyone can see it, can you just explain again at a high
13 level what's represented here?

14 A So what we're seeing here is an originator in a foreign
15 country going to their bank -- the originating bank, the
16 foreign bank -- and, again, I refer to it as a respondent
17 bank -- and then that bank sending instructions -- you see the
18 arrow pointing up to the correspondent bank in the U.S., so
19 that's a bank that's going to have access to either FedWire or
20 CHIPS, so the payment message is sent there. Then FedWire or
21 CHIPS will perform that transaction, and it goes to -- see the
22 arrow pointing now down -- goes to the correspondent bank in
23 the United States; and so correspondent bank one and
24 correspondent bank two in the United States have to have
25 access to the system -- either FedWire or CHIPS -- and you see

Amenta - Direct - Smith

1 to complete that transaction, there is an instruction from
2 that correspondent bank on the receiving side to the
3 beneficiary financial institution to credit the amount for the
4 ultimate beneficiary.

5 Q So is this a diagram of a single transfer of funds from
6 the originator to the beneficiary?

7 A That's correct.

8 Q And on this diagram, both the originator and the
9 beneficiary are at banks that are outside of the United
10 States?

11 A Correct.

12 Q And is originator just, sort of, another word for the
13 person sending the money?

14 A Yes. And the beneficiary for someone receiving it.

15 Q Okay. So when we walked through this a little bit more,
16 the originator is the person who wants to send the money, they
17 go to their bank, and what do they do to initiate a wire
18 transaction in U.S. dollars?

19 A So they will inform the ordering bank that they need to
20 make a payment to the beneficiary, and they'll give the
21 instructions to say, hey, I need to send -- Robert needs to
22 send X amount of money to Mr. A, or Mr. B, and so here -- and
23 here is who I need to send it to you. And then the
24 originating bank will use their correspondent relationships to
25 make that happen.

Amenta - Direct - Smith

1 Q And then what happens, sort of, as it moves along?

2 There's a message that says instruction?

3 A Yeah, so -- again, that instruction will be, you know --

4 that will be that SWIFT message that we're referring to

5 earlier. That's how the banks speak to each other, so that's

6 how that foreign bank is going to tell the U.S. bank that that

7 transaction needs to happen.

8 Q And is a SWIFT message an electronic communication?

9 A It is.

10 Q And, just briefly, is it ever referred to as anything

11 other than just a SWIFT?

12 A So SWIFT message is the predominant SWIFT message for --

13 a customer payment is called an MT 103, so a 103 SWIFT message

14 is the instruction that that foreign bank is going to be

15 sending to the United States.

16 Q And, just again, what kind of information is in the SWIFT

17 message?

18 A All the information. It will tell you who needs to

19 receive it, and what bank account it needs to go into, and who

20 in that bank it belongs to -- who the beneficiary recipient's

21 bank is.

22 Q So on the chart, if we're at the originating bank, which

23 is a foreign bank outside of the U.S., we want to send money,

24 that bank then sends the SWIFT message to the correspondent

25 bank that's in the United States; is that right?

Amenta - Direct - Smith

1 A Correct.

2 Q And then from there, what happens?

3 A So it comes into the United States, that correspondent
4 bank will then -- so if it's FedWire, it will initiate that
5 payment to the correspondent bank on the receiving side, and
6 then -- for eventual crediting and debiting of that foreign
7 financial bank.

8 Q And so at the end of -- the result of this transfer of
9 the funds show up in the beneficiary bank's account.

10 A Correct. It's called a funds transfer.

11 Q And this, again, represents a single funds transfer from
12 one bank to another?

13 A It's one single funds transfer, yes.

14 Q If both the originator and beneficiary bank are foreign
15 banks but they're in the same country, does the electronic
16 transfer still go through the United States?

17 A Correct. You know, absent the correspondent bank being
18 the same for both, the originator and the beneficiary, it will
19 still have -- it will go through the correspondent banks in
20 the United States.

21 Q If the correspondent banks in the United States have a
22 relationship with each other, can there still be, sort of, a
23 transfer even without FedWire or CHIPS?

24 A So if the respondent banks have a relationship with a
25 correspondent bank, then the answer is yes. If they do not,

Amenta - Direct - Smith

1 if they're banking with different banks, then they have to go
2 through FedWire and CHIPS.

3 Q But even if they don't have that relationship, does that
4 transaction still pass through the United States?

5 A Yes.

6 Q And what is a book transfer?

7 A A book transfer is when one financial institution is
8 going to have both the originator and beneficiary bank as
9 their customer; and so, in this example, if the two foreign
10 banks had, you know, the name correspondent bank, that
11 correspondent bank does not need to find the partner to make
12 this transaction happen. They can just debit and credit the
13 accounts.

14 Q And so we talked about how this represents a single
15 transfer of funds in U.S. dollars from one foreign bank to
16 another.

17 If any portion of this communication chain is
18 broken, does the transfer of funds go through?

19 A No.

20 Q And so, in effect, the wire for this single transfer goes
21 from one foreign bank, through the United States, and back out
22 to the other foreign bank?

23 A Correct.

24 Q How quickly does a single transfer of funds like this
25 actually happen?

Amenta - Direct - Smith

1 A So once the Federal Reserve receives the payment
2 instruction, the FedWire instruction, it is instantaneous.
3 It's called the Real-Time Gross Settlement System, meaning
4 that once it receives a notification, the processing happens.

5 Q So while it looks like there's a lot of steps on this, it
6 really, sort of -- it's automated; it goes right through.

7 A Seconds.

8 Q And once the transfer of funds is completed, the
9 beneficiary bank can actually take the money, then, out there
10 at the end?

11 A That's correct.

12 (Continued on the following page.)
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Amenta - direct - Smith

1 BY MS. SMITH: (Continuing)

2 Q So I'd like to show you two documents already in evidence
3 just to sort of further demonstrate how this works.

4 Can we take a look at Government Exhibit 255-A which
5 is already in evidence as a correspondent bank record of
6 Northern Trust and if we take a look at this document, does
7 this document show a funds transfer in the amount of
8 \$6,500,000?

9 A It does.

10 Q What's the originating bank or the sending bank for this
11 transaction?

12 A So the originating bank is Bank Morgan Stanley AG in
13 Singapore.

14 Q So that's the bank that's sending the funds?

15 A Correct.

16 Q And that's a bank that's located outside the United
17 States?

18 A Correct.

19 Q And who is the individual or the entity at this bank that
20 was sending the funds for this transaction?

21 A Judy Leissner.

22 Q And what was the correspondent, the U.S. correspondent
23 bank for the originating or the sending bank?

24 A Northern Trust in this transaction.

25 Q And then which was the beneficiary or the recipient bank

Amenta - direct - Smith

1 for this transaction?

2 A So the U.S. correspondent for this transaction is UBS in
3 Stamford, Connecticut and then UBS, the respondent bank is UBS
4 AG in Singapore, so, to its affiliate and then for ultimate
5 credit to Victoria Square Investments Limited.

6 Q So the receiving bank was UBS Singapore which was also a
7 foreign bank?

8 A Correct.

9 Q And then the individual or entity ultimately receiving
10 the funds was Victoria Square Investments Limited?

11 A That's correct.

12 Q I think at the bottom, there's also a reference, it says,
13 "Attention"?

14 A "Attention Fanny."

15 Q And so this is an example of a foreign bank to foreign
16 bank transaction as we saw in Government Exhibit 160?

17 A Correct.

18 Q And so for this transaction, the wire for the funds of
19 the \$6.5 million would have gone from Morgan Stanley in
20 Singapore to Northern Trust in the United States to UBS in the
21 United States and then back out to UBS in Singapore?

22 A Correct, just like the diagram showed before.

23 Q Okay. Can we also take a look at Government
24 Exhibit 255-B, as in "boy," which is in evidence. And is this
25 also a bank record of Northern Trust?

Amenta - direct - Smith

1 A It is.

2 Q Okay. And does this show information for a funds
3 transfer in the amount of \$665,000?

4 A Correct.

5 Q What's the originating bank for this transaction?

6 A The originating bank for this transaction is Deutsche
7 Bank so DBS Bank LTD in Singapore.

8 Q And that's a foreign bank located in Singapore?

9 A Correct.

10 Q And who was the individual or entity at the bank that was
11 sending the funds for this transfer?

12 A Black Rock Commodities.

13 Q And what was the U.S. correspondent bank for the sending
14 or the originating bank?

15 A Northern Trust.

16 Q And then what was the beneficiary or the recipient bank
17 for this transaction?

18 A Bank of America.

19 Q And so that's a domestic bank located in the U.S.?

20 A Correct.

21 Q Who is the individual or entity that was receiving funds
22 for this transaction?

23 A Samilor Enterprises.

24 Q And what was the address of that recipient?

25 A Syosset, New York.

Amenta - direct - Smith

1 Q Is there a U.S. correspondent bank for the receiving
2 bank?

3 A No -- yes. So the correspondent bank is Bank of America
4 but they're also the bank for the recipient.

5 Q And so for this transfer of funds, did the wire travel
6 from outside the United States and then end in the United
7 States?

8 A That is correct.

9 Q It did go back out because it was a foreign to a domestic
10 bank?

11 A Correct.

12 Q Can we just take a look at Government Exhibit 160 one
13 more time. So I just want to ask one more question about sort
14 of the SWIFT message process.

15 A Okay.

16 Q For these transactions, is it the information that goes
17 through the wire in the transfer of funds in U.S. dollars is
18 contained within the SWIFT message?

19 A That's correct.

20 Q And that's the message that needs to go through in order
21 for the full wire to be completed?

22 A That's the message that needs to go to the correspondent
23 banks to make the transaction happen.

24 MS. SMITH: No further questions, Your Honor.

25 THE COURT: Thank you.

Amenta - cross - Intrater

1 Cross-examination?

2 MR. INTRATER: Yes, Your Honor. Thank you.

3 CROSS-EXAMINATION

4 BY MR. INTRATER:

5 Q Good afternoon.

6 A Good afternoon.

7 Q You said on direct that you went to college at
8 Saint Francis?

9 A Saint Francis, Brooklyn, correct.

10 Q And that's just down the block right on Remsen?

11 A It is.

12 Q It's not in New Jersey?

13 A No.

14 Q It's in Brooklyn?

15 A Correct.

16 Q Okay. The servers for FedWire, those are in New Jersey?

17 A Texas and New Jersey.

18 Q Texas and New Jersey, but not in Brooklyn?

19 A Correct.

20 Q Okay. And the government showed you a couple of reports,
21 a couple of exhibits, 255-A and 255-B. Do you recall seeing
22 those?

23 A I do.

24 Q Have they shown you those before today?

25 A Yes.

Amenta - cross - Intrater

1 Q You met with the government before today?

2 A Correct.

3 Q And they showed you those exhibits?

4 A Correct.

5 Q Can we just look at 255-A for a second. And if I
6 misstate anything, just please let me know, of course. Okay?

7 A Sure.

8 Q So you have an international wire transfer and I think
9 that your testimony on direct was, in sum -- again, if I'm
10 saying something incorrect, just please correct me -- that
11 even if money goes eventually from a foreign bank to a foreign
12 bank, it will clear through the United States, right?

13 A Correct.

14 Q Which means that it involves financial institutions in
15 the United States?

16 A Correct.

17 Q Okay. Now, in this exhibit, 255 -A, if you look on the
18 top right, UBS AG, that's one of the correspondent banks?

19 A Correct.

20 Q Where is that located?

21 A Stamford, Connecticut.

22 Q Not in Brooklyn?

23 A No.

24 Q And then 255-B. Here, the correspondent bank, top right,
25 that's Bank of America. That's New York, New York, right?

Amenta - cross - Intrater

1 A Correct.

2 Q That's Manhattan?

3 A Correct.

4 Q Not Brooklyn?

5 A Correct.

6 Q Okay. And then do you remember that the government on
7 direct, they highlighted the entity, the entity, that's the
8 beneficiary, this Samilor Enterprises?

9 A Correct.

10 Q You haven't heard of that other than looking at this
11 exhibit, right?

12 A No.

13 Q You don't know what that company does?

14 A Correct.

15 Q Okay. That company is located in Syosset, right?

16 A Correct.

17 Q Do you know it's out on Long Island?

18 A It's in Long Island.

19 Q But Long Island has nothing to do with the actual wire
20 transfer, right?

21 A The location of -- no.

22 Q It has nothing to do with it?

23 A Correct.

24 MR. INTRATER: Okay. No further questions.

25 THE COURT: Anything further?

Sidebar

1 MS. SMITH: No, Your Honor.

2 THE COURT: You're excused. Thank you.

3 (Witness excused.)

4 THE COURT: Please call your next witness.

5 Who's your next witness?

6 MS. SMITH: Your Honor, can we have a brief sidebar
7 before we call our next witness?

8 THE COURT: Sure.

9 (The following occurred at sidebar.)

10 THE COURT: Yes?

11 MS. SMITH: So just due to scheduling, we have our
12 agent here who is it ready to go on. We have two witnesses on
13 Monday who have to testify on Monday so we'll have to take
14 them a little bit out of order.

15 THE COURT: Yes.

16 MS. SMITH: But I do want to flag that very soon
17 after we start this direct, we're going to hit some exhibits
18 that the defense has objected to.

19 THE COURT: Which exhibits?

20 MS. SMITH: The ones that we put in our filing from
21 last night. There are e-mails and calls related to Silken
22 Waters and the unrelated accounts that involve the defendant's
23 wife and his mother-in-law and they objected. So I just
24 wanted to sort of flag that before we get started.

25 THE COURT: Okay.

Sidebar

1 MR. AGNIFILO: So I think we might have gone faster
2 today than we thought. We thought we were going to get to the
3 agent on Monday.

4 THE COURT: Okay.

5 MR. AGNIFILO: Here's my question as a practical
6 matter. How much do you think you have until you get to the
7 stuff that's still in dispute?

8 MR. WIBLE: About three minutes.

9 MR. AGNIFILO: Oh, I was hoping it would be more
10 like 30.

11 I mean, obviously, we got the brief last night the
12 same time Your Honor got it. So is there anything you guys
13 can do --

14 THE COURT: You don't have any other witnesses?

15 MS. SMITH: This is the witness. I mean we have two
16 people we scheduled for Monday so he's ready to go and we're
17 happy to go document by document. I just wanted to flag that.

18 THE COURT: Okay. And what are those couple of
19 documents that you think you'll get to today?

20 MR. WIBLE: The very first one, Your Honor, I don't
21 know if Your Honor would like to see it, I don't have a hard
22 copy with me at sidebar, but the very first one is an e-mail
23 exchange between the defendant's wife using an e-mail account
24 in her name and the personal e-mail accounts of the bankers
25 who assisted in opening Silken Waters' account into which the

Sidebar

1 defendant's family received the payments from Capital Place.
2 So after that, it would be a series of related e-mails
3 regarding the bank account opening and the, obtaining the sort
4 of hierarchy of ownership of Silken Waters which had been
5 incorporated several weeks earlier.

6 THE COURT: Okay. I really hate to waste 45 minutes
7 which is what we'll be wasting by not putting on another
8 witness, but it doesn't make sense to put on the witness if
9 we're not going to be able to move forward with testimony
10 since there are objections to the evidence that you're seeking
11 to introduce and I need to rule on those. And while this is
12 an issue that was raised pretrial, I received the additional
13 filing by the government late last night, I believe it was,
14 and Counsel has not had an opportunity to be heard on it
15 further. So I can't rule on it.

16 So I'm going to let the jury go early. I'm going to
17 tell them that we have been moving much faster than expected.
18 While there is a witness ready to go, there's some legal
19 issues that we need to discuss, we will do that between today
20 and Monday and be ready to move forward on Monday and we
21 anticipate concluding testimony by the 29th of the month.

22 MR. AGNIFILO: I think that's right.

23 THE COURT: Okay?

24 MR. WIBLE: Thank you.

25 MR. AGNIFILO: Thank you, Judge.

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1 (In open court; sidebar ends.)

2 THE COURT: So it's a rainy day and I know you'd
3 rather stay and hear testimony than leave early today but the
4 next witness, and as you can see from today's witnesses, we
5 moved much faster than anyone anticipated. We do have another
6 witness ready to go, however, there are a number of legal
7 issues that I need to rule on and I need to hear from the
8 parties. So instead of having you wait around, we are done
9 for today.

10 I saw that kiss from the back.

11 I would like to update you on where we are and to
12 let you know that we anticipate to be done with all testimony
13 by the 29th of the month, it may even be sooner but by the
14 29th, at which point you will hear summations from the
15 parties. It will be their argument to you as to what the
16 evidence shows. I will then charge you and you will then be
17 able to deliberate.

18 Please remember, do not discuss the case with
19 anyone, don't let anyone discuss it with you, don't read
20 anything about the case, and I'll see you Monday morning at
21 9:30.

22 Mr. Muldoon, I hope you enjoy your birthday.

23 THE JUROR: Thank you.

24 THE COURT: Have a great weekend, everyone.

25 (Jury exits.)

Proceedings

1 THE COURT: Please be seated, everybody.

2 So I can hear from the parties now or, Mr. Agnifilo,
3 if you prefer, you can submit something in writing.

4 MR. AGNIFILO: I would rather give the Court
5 something in writing tomorrow.

6 THE COURT: Okay.

7 MR. AGNIFILO: Thank you, Judge.

8 THE COURT: Is there anything else we need to
9 discuss?

10 MS. SMITH: Your Honor, there are just a couple of
11 things we wanted to flag.

12 THE COURT: Okay.

13 MS. SMITH: We had raised the issue for Ms. Lim of a
14 Curcio hearing and so we'd like to -- I think Your Honor had
15 deferred on that point, so we'd like to re-raise that now
16 given the timing of her likely testimony.

17 THE COURT: When is she likely to be here in the
18 country?

19 MS. SMITH: So she arrived yesterday.

20 THE COURT: Okay.

21 MS. SMITH: So, obviously, it just depends on the
22 pace of the case and defense's determination but it could be
23 as close, as early as next Thursday.

24 THE COURT: And tell me why you believe there's a
25 Curcio issue here?

Proceedings

1 MS. SMITH: So her current counsel worked in
2 Mr. Agnifilo's firm until, our understanding is until 2020,
3 during the time that they were representing the defendant.

4 THE COURT: Okay. And Mr. Agnifilo?

5 MR. AGNIFILO: Your Honor, I don't understand this,
6 why this is even a Curcio situation. I mean --

7 THE COURT: Did he work at all on your client's
8 case?

9 MR. AGNIFILO: No, not at all. The team that's here
10 has been the team from the beginning. And he, his name is
11 Joshua Kirshner. I don't remember the date that he left but
12 it was over, it was over a year ago.

13 THE COURT: And so the government still believes
14 there's a Curcio issue even though he never worked on this
15 case?

16 MS. SMITH: We didn't have an understanding one way
17 or the other so we were flagging it. So if that's the case,
18 you know, I still think that there's a concern because of the
19 firm, and it's a small firm, and I don't know what walls would
20 have been put up or what information, so we're raising it. If
21 the Court doesn't think it's an issue, then that's fine.

22 THE COURT: I'll look at the law again. I don't
23 know that it is. I mean, if necessary, I can have an attorney
24 present the day of Ms. Lim's testimony to meet her immediately
25 prior to any testimony, but I don't know that a Curcio, a full

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1 Curcio hearing is necessary. I'll look at the law. If I
2 believe there is, then we should discuss it and then we should
3 have her here and I'll have standby counsel for after court on
4 one of the trial days next week.

5 MR. AGNIFILO: That's fine. I want the Court to be
6 completely comfortable. I mean, I can represent to the Court
7 and for the record Joshua Kirshner played no role in this
8 case. This really has been -- I'm going to say this and get
9 in trouble when I say it, this has really been Ms. Geragos and
10 my case for the longest time. I'm the one who went to
11 Malaysia. For a long time, it was just me. Ms. Geragos , as
12 I think you've probably seen, is the heart and soul of the
13 case and then Mr. Kaplan and Mr. Intrater came later closer to
14 trial. Mr. Kirshner played no role in this trial at any time
15 in any form or fashion.

16 THE COURT: Okay. So I'll take a look at the case
17 law again. It doesn't sound like there's an issue but if in
18 an abundance of caution I believe I need to have a
19 conversation with Ms. Lim about this, then we'll do it after
20 the trial date.

21 MS. SMITH: The other thing we wanted to raise is
22 that defense counsel gave the government a Touhy request at
23 the end of last week.

24 THE COURT: Okay.

25 MS. SMITH: I believe on Saturday morning. We

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1 responded on Monday.

2 From our perspective, and this is in our response,
3 the request was overly broad, did not specify specific areas
4 of testimony, and so we have gone back and said that we feel
5 the request was overbroad and asked for additional
6 information, but I did want to flag that because I anticipate
7 that there may be litigation around that request and, in
8 particular, around the scope of any attempts to put in prior
9 inconsistent statements of our witnesses through calling FBI
10 agents. That may be appropriate but we need to know which
11 date and litigate them ahead of time. So I just wanted to
12 flag that for the Court as well.

13 THE COURT: Okay. And while you're doing that,
14 obviously, this is something that can always be resolved by
15 stipulation.

16 MS. SMITH: Yes, that's true, Your Honor.

17 THE COURT: And so that's something that both sides
18 should keep in mind and if there are statements that need to
19 be admitted before this jury, then you should stipulate to
20 their admission.

21 MS. SMITH: Yes, Your Honor. They have not yet
22 identified which statements but I agree we would be open to
23 stipulation in that case.

24 MR. AGNIFILO: That's news to our ears, Judge. We
25 will put together a list, we'll get it to the government

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1 tomorrow or Saturday at the very latest, and we'll see if we
2 can stipulate. That would make things much easier.

3 THE COURT: Okay. Anything else that we need to
4 discuss, talk about?

5 I know I have the 803(5) issue and the
6 co-conspirator issues. Those are the only two issues that are
7 on my plate. I do need the jury instructions sooner rather
8 than later so that I can start working on those. I don't want
9 to have to have the jury wait in between the end of testimony,
10 summations. Obviously, I assume the parties want a draft
11 charge before you sum up to the jury.

12 MR. AGNIFILO: What I think we can work toward is we
13 got the government our version. I think we probably changed
14 quite a bit of what they gave us.

15 One of the things that's the hardest point, I'm just
16 putting it on Your Honor's radar screen, and if the government
17 can point me to some, I'd love to see them, I don't know that
18 there's any established criminal jury instructions for
19 Count Two. I don't know that Count Two has even proceeded to
20 a criminal trial and I'm happy to have this conversation with
21 the government. So that -- so very rarely in our business, we
22 invent the wheel but we're about to invent the wheel.

23 THE COURT: It happens more often than you realize,
24 Mr. Agnifilo.

25 MR. AGNIFILO: Maybe I'm just bad at inventing. And

1 on top of it, we have Malaysian law so we're inventing that
2 one too.

3 My proposal is a practical one. We have tomorrow
4 off. Let's see where we are on the jury instructions among
5 the parties and then we'll get something to Your Honor.

6 THE COURT: Yes. Try to get it to me by the end of
7 the day tomorrow, early Saturday.

8 MR. AGNIFILO: Very good.

9 THE COURT: Okay. Have a great weekend, everyone.

10 MS. SMITH: Thank you, Your Honor.

11 (Whereupon, the trial adjourned at 3:00 p.m. to
12 resume Monday, March 21, 2022 at 9:30 a.m.)
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